

# Mechanisms for the Effective Collection of VAT/GST

WHERE THE SUPPLIER IS NOT  
LOCATED IN THE JURISDICTION OF  
TAXATION



# **Mechanisms for the Effective Collection of VAT/GST When the Supplier Is Not Located In the Jurisdiction of Taxation**

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## *Foreword*

This report on the “Design and operation of mechanisms for the effective collection of VAT/GST in cases where the supplier is not located in the jurisdiction of taxation” (the report) focuses on the rules and mechanisms for the effective collection of VAT/GST on cross-border supplies of services and intangibles, as recommended in the International VAT/GST Guidelines (Guidelines) and in the 2015 Final Report on Action 1 “Addressing the Tax Challenges of the Digital Economy” of the OECD/G20 Base Erosion and Profit Shifting Project (BEPS Action 1 report).

The effective implementation and operation of these rules and mechanisms are priorities for countries around the world, to ensure that VAT/GST is properly paid on the continuously growing online trade in services and digital products. The consistent and coherent implementation of these collection regimes across jurisdictions is expected to enhance levels of compliance and support tax authorities' enforcement capacity, notably by facilitating international administrative co-operation.

This report was developed by the OECD with the active involvement of a broad range of jurisdictions beyond the OECD and of the global business community, notably through the OECD Global Forum on VAT and the Technical Advisory Group to OECD Working Party No. 9 on Consumption Taxes (WP9 TAG).

It broadly consists of the following components:

- **Chapter 1**, provides a response to the key policy questions and design issues concerning the collection of VAT/GST on supplies of services and intangibles in cases where the supplier is not located in the jurisdiction of taxation (Chapter 3 of the Guidelines);
- **Chapter 2**, examines and provides guidance on a range of specific design questions related to the implementation of “registration-based collection regimes”, *i.e.* VAT/GST collection regimes that are based on the requirement for foreign suppliers to register and remit the tax in the jurisdiction of taxation (Chapter 3, Section C.3.2 of the Guidelines);
- **Chapter 3**, provides more detailed guidance on the design and practical operation of a “simplified registration and compliance regime” for non-resident suppliers as recommended by the Guidelines (Chapter 3, Section C.3.3) and the BEPS Action 1 report (Section 8.2.2 and Annex D).

This report is the first in a series of “implementation packages” to support the effective and consistent implementation of the International VAT/GST Guidelines that are incorporated in the OECD Council Recommendation on the Application of Value Added Tax/Goods and Services Tax to the International Trade in Services and Intangibles [\[C\(2016\)120\]](#)<sup>1</sup>.

It does not aim at detailed prescriptions for national legislation. Jurisdictions are sovereign with respect to the design and application of their laws. Rather, the report seeks to present a range of possible approaches and discuss associated policy considerations. Its purpose is to serve as a reference point. It intends to assist policy makers in their efforts to evaluate and develop the legal and administrative framework in their jurisdictions taking into account their specific economic, legal, institutional, cultural and social circumstances and practices.

The report is evolutionary in nature and will be reviewed regularly in light of the rapid development of technology and online sales and delivery processes.

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<sup>1</sup> Available at <http://acts.oecd.org/Instruments/ListByInstrumentDateView.aspx>



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## *Abbreviations and acronyms*

<b>API</b>	Application programming interface
<b>BEPS</b>	Base erosion and profit shifting
<b>B2B</b>	Business-to-business
<b>B2C</b>	Business-to-consumer
<b>CFA</b>	Committee on Fiscal Affairs
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SME</b>	Small and medium enterprise
<b>TAG</b>	Technical Advisory Group
<b>VAT</b>	Value Added Tax
<b>VAT/GST</b>	Value Added Tax/Goods and Services Tax
<b>WP9</b>	Working Party No. 9 on Consumption Taxes
<b>XML</b>	Extensible Markup Language

## *Glossary of terms*

**BEPS Action 1 Report** - The 2015 Final Report on Action 1 "Addressing the Tax Challenges of the Digital Economy" of the OECD/G20 Base Erosion and Profit Shifting Project

**Business** - Entity recognised as a “business” in national law

**Business agreements** - Business agreements consist of the elements that identify the parties to a supply and the rights and obligations with respect to that supply. They are generally based on mutual understanding.

**Foreign supplier** - Supplier not located in the jurisdiction of taxation. This refers to cases where the jurisdiction of taxation may have limited or no authority effectively to enforce a collection obligation upon the supplier.

**Guidelines** - The International VAT/GST Guidelines as incorporated in the OECD Council Recommendation on the Application of Value Added Tax/Goods and Services Tax to the International Trade in Services and Intangibles

**Intangibles** - Intellectual property rights and other intangibles

**Simplified registration and collection regime** - Simplified registration-based regime for the collection of VAT/GST in cases where the supplier is not located in the jurisdiction of taxation, as recommended in the International VAT/GST Guidelines (Section C. 3.3.) and in the BEPS Action 1 Report (Section 8.2.2 and Annex D)

**Threshold** - Amount, measured in currency, of supplies into the jurisdiction of taxation below which foreign suppliers are relieved of the obligation to both register for and collect VAT through a simplified registration and collection regime

**VAT** - Any national tax that embodies the basic features of a value added tax as described in Chapter 1 of the International VAT/GST Guidelines by whatever acronym it is known (*e.g.* GST)

## *Preface*

### **Background**

In January 2016, the OECD Committee on Fiscal Affairs (CFA) requested the development of guidance to support the coherent implementation of the International VAT/GST Guidelines (the Guidelines) as incorporated in the OECD Council Recommendation on the Application of Value Added Tax/Goods and Services Tax to the International Trade in Services and Intangibles [[C\(2016\)120](#)]<sup>1</sup>. This work is expected to result in a series of reports providing practical guidance to tax authorities, to facilitate the effective and coherent implementation of the principles of the Guidelines, thereby taking into account differences in jurisdictions' legislative framework and administrative capacity.

This work is carried out by the OECD's Working Party No 9 on Consumption Taxes (WP9), in close consultation with the business community through the Technical Advisory Group to WP9 (TAG).

### **Objective of this report**

The CFA requested that WP9 focus first on the development of concrete guidance for the design and practical implementation of mechanisms for the efficient and effective collection of VAT/GST on supplies of services and intangibles by foreign suppliers, as recommended in the Guidelines. The outcome of this work is presented in this report (hereafter the "report on collection mechanisms").

This report provides guidance to support the coherent implementation of simplified registration-based collection regimes as recommended in the Guidelines (Section C.3.3 of the Guidelines) and in the 2015 Final Report on Action 1 "Addressing the Tax Challenges of the Digital Economy" of the OECD/G20 Base Erosion and Profit Shifting Project (the "BEPS Action 1 Report"; Annex D).

Jurisdictions around the world are working on the implementation of simplified registration-based collection regimes, and they are often confronted with similar design challenges and difficult choices presented by such challenges. There is much to be gained from analysing the key challenges of implementing and operating such regimes and identifying possible options and best practice approaches for addressing these challenges. A coherent implementation of simplified registration and collection regimes across jurisdictions, based on common best practice approaches, is likely to enhance the levels of compliance by foreign suppliers and to support tax authorities' enforcement capacity by facilitating international administrative co-operation.

### **Scope of this report**

This report on collection mechanisms consists of the following components:

- **Chapter 1**, provides a general description of basic policy questions and design issues concerning the collection of VAT/GST on supplies of services and intangibles by foreign suppliers;
- **Chapter 2**, provides an overview of the key policy and design issues for tax authorities to consider when designing and implementing a registration-based collection regime. These

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<sup>1</sup> Available at :

<http://acts.oecd.org/Instruments/PrintInstrumentView.aspx?InstrumentID=350&InstrumentPID=473&InstrumentHID=0&Lang=en>

considerations may be equally relevant for regimes with specific simplification measures and for registration-based regimes without simplifications; and

- **Chapter 3**, provides more detailed guidance on the design and practical operation of a simplified registration and collection regime as recommended by the Guidelines (Section C.3.3.) and by the BEPS Action 1 Report (Section 8.2.2 and Annex D).

This report focuses primarily on the collection of VAT/GST on supplies of services and intangibles by a supplier not located in the jurisdiction of taxation (foreign supplier).

This report builds on the research, analysis and experience of jurisdictions that have implemented a simplified registration and collection regime or that are in the process of doing so, and on the experience of businesses that have registered under such regimes or that are considering doing so. In this context, it is important to bear the following considerations in mind:

- Tax administrations operate in widely varying environments (legal, economic, cultural, administrative capacity...) and the way in which each administers a simplified registration and collection regime is often influenced by this environment. In addition, it is acknowledged that the business models and set-ups may differ considerably in terms of compliance capacity and motivation;
- The exchange of information and administrative co-operation can and should play a significant role in addressing and overcoming the challenges for tax administrations in operating and policing these regimes, notably to support the enforcement of these regimes against foreign suppliers and the monitoring of compliance levels;
- Consultation with the businesses community when designing a simplified registration and collection regime and a proper communication strategy to publicise its implementation and to explain key compliance aspects are essential for its successful implementation. Also the provision of adequate lead time (i.e. the time between the announcement and the implementation of the regime) provides benefits for both tax administrations and taxpayers by allowing a smooth and proper operational process change;
- While recognising the important role of technology for the simplification of administration and compliance in the context of a simplified registration-based regime, this report does not treat the technological aspects in detail in light of the fact that technology is already evolving rapidly and is likely to continue evolving at a speed that can hardly be captured by this report. However, this report is intended to be evolutionary in nature and will be reviewed from time to time in light of further developments;
- This report does not aim at detailed prescriptions for national legislation. Jurisdictions are sovereign with respect to the design and application of their laws. Rather, the report seeks to present a range of possible approaches and discuss associated policy considerations. Its purpose is to serve as a reference point. It intends to assist policy makers in their efforts to evaluate and develop the legal and administrative framework in their jurisdictions taking into account their specific economic, legal, institutional, cultural and social circumstances and practices.

## *Chapter 1*

### **Collecting VAT on supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation**

#### **Basic policy questions and design issues**

#### **A. Introduction**

1. This chapter recalls the basic policy questions and design issues raised by VAT<sup>1</sup> collection on supplies of services and intangibles in cases in which the supplier is not located in the jurisdiction of taxation. This chapter first situates the tax collection problem within the broad framework of the core principles underlying the application of VAT in an international context laid down in the Guidelines. It then provides an overview of the approaches that jurisdictions may take, and have taken, to VAT collection on supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation, and it considers the potential advantages and disadvantages of the various options.

#### **B. Situating tax collection as applied to international trade within the framework of the core features of VAT**

2. A proper analysis of basic policy questions and design issues raised by VAT collection on supplies of services and intangibles in cases in which the supplier is not located in the jurisdiction of taxation, requires an understanding of how VAT collection interacts with the core features of VAT as applied to international trade. The ensuing discussion recalls these core features of VAT and the rules and mechanisms for the practical implementation of these core features recommended by the Guidelines.

##### ***B.1 Core features of VAT in all trade***

3. VAT systems are defined in substance by two fundamental features that they exhibit in all trade to which they apply, *i.e.* to wholly domestic trade as well as to international trade. First, the VAT constitutes a broad-based tax on final consumption. Second, the VAT is collected through a staged collection process. These core features are discussed in further detail in Chapter 1 of the Guidelines.

##### ***B.1.1 Broad-based tax on final consumption***

4. As a broad-based tax on final consumption, which is understood to mean final consumption by households, it necessarily follows that the burden of the VAT should not rest on businesses.<sup>2</sup> This conclusion follows from the proposition that the VAT is a tax on household consumption: because businesses are not households, they are, in principle, incapable of final or household consumption. In practice, if a business acquires goods, services or intangibles that are used in whole or in part for the private consumption of the business owners, VAT regimes must determine whether, or the extent to which, the purchase should be treated as acquired for business purposes or for private consumption.

##### ***B.1.2 Staged collection process***

5. Under the staged collection process that characterises the operation of a VAT, each business in the supply chain participates in the process of collecting the tax, remitting the proportion of tax

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<sup>1</sup> For the purposes of this report the terms “value added tax” and “VAT” are used to refer to any national tax that embodies the basic features of a value added tax as described in Chapter 1 of the Guidelines, by whatever name or acronym it is known, *e.g.* “Goods and Services Tax” (“GST”).

<sup>2</sup> See Chapter 2 of the Guidelines, “Neutrality of Value Added Taxes in the Context of Cross-border Trade”.

corresponding to its margin, *i.e.* on the difference between the VAT imposed on its taxed inputs and the VAT imposed on its taxed outputs. Thus, the tax is in principle collected on the “value added” at each stage of production and distribution.

6. This central design feature of the VAT, coupled with the fundamental principle that the burden of the VAT as a consumption tax should not rest on businesses, requires a mechanism for relieving businesses of the burden of the VAT they pay when they acquire taxable supplies. Almost all jurisdictions that operate a VAT implement the staged collection process through the invoice-credit method. Under this method, each business charges VAT at the rate specified for each supply and passes to the purchaser an invoice showing the amount of VAT charged. The purchaser is in turn able to credit that input VAT against the output VAT charged on its sales, remitting the balance to the tax authorities and receiving refunds when there are excess credits.

7. In general, jurisdictions with a VAT impose the tax at every stage of the economic process and allow deduction of taxes on purchases by all but the final consumer. This design feature gives to the VAT its essential character as an economically neutral tax. The full right to deduct input tax through the supply chain, except by the final consumer, ensures the neutrality of the tax, whatever the nature of the product, the structure of the distribution chain, and the means used for its delivery (*e.g.* retail stores, physical delivery, Internet downloads). As a result of the staged payment system, VAT thereby “flows through the businesses” to tax supplies made to final consumers.

### *B.1.3 Possible approaches to VAT collection in light of its core principles*

8. VAT collection is vital to the functioning of a levy that generates approximately 20 percent of global revenue in over 160 countries.<sup>3</sup> In theory, one may envision a variety of approaches to VAT collection as a means of implementing the staged collection process, including reliance individually or in some combination on (1) suppliers, (2) customers, (3) intermediaries, and, depending on developments in technology, (4) automated systems. The choice of the appropriate collection regime might depend on such factors as whether the trade is domestic or international; whether the transactions are business-to-business (B2B) or business-to-consumer (B2C); and whether the trade is in goods, services, or intangibles. The question of how VAT should be collected is ultimately a practical one for which there may be alternative approaches depending on the circumstances in which the VAT operates and even in similar circumstances when more than one approach may be acceptable.

9. The Guidelines are devoted in large part to the recommendation of place of taxation rules designed to implement the destination principle as applied to internationally traded services or intangibles. This chapter examines the approaches for collecting the tax in the jurisdiction of taxation identified in accordance with the rules recommended by the Guidelines when the supplier is not located in that jurisdiction. This chapter briefly summarises these rules below before turning to the tax collection issues they raise.

## ***B.2 VAT and international trade: the destination principle and its implications for tax collection***

### *B.2.1 The destination principle - Guideline 3.1*

10. The VAT exhibits its core features as a tax on final consumption collected through a staged collection process in domestic as well as in international trade. Implementation of the VAT in the international context, however, raises a question that one does not confront in the domestic context, namely: which jurisdiction should impose the VAT in a cross-border transaction, the jurisdiction of origin or the jurisdiction of destination? Resolution of this question has important implications not only for how

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<sup>3</sup> Consumption Tax Trends OECD (2016), p.17.

VAT is generally implemented in the international context but also for determining the appropriate approaches to tax collection.

11. Under the destination principle, tax is ultimately levied only on the final consumption that occurs within the taxing jurisdiction. It is also generally understood that all revenue accrues to the jurisdiction of final consumption under the destination principle. Under the origin principle, the tax is levied in the various jurisdictions where the value was added. The key economic difference between the two principles is that the destination principle places all firms competing in a given jurisdiction on an even footing whereas the origin principle places consumers in different jurisdictions on an even footing.

12. Because the destination principle places all firms competing in a given jurisdiction on an even footing, it achieves neutrality in international trade. Under the destination principle as it is generally implemented, exports are not subject to tax with refund of input taxes (that is, “free of VAT” or “zero-rated”) and imports are taxed on the same basis and at the same rates as domestic supplies.

13. Because it achieves neutrality in international trade, there is widespread consensus that the destination principle, with revenue accruing to the country of import where final consumption occurs, is preferable to the origin principle from both a theoretical and practical standpoint. In fact, the destination principle, which is the norm in international trade, is sanctioned by World Trade Organization (“WTO”) rules,<sup>4</sup> and reflects rules generally in force under most existing VAT systems.

14. In accord with the widespread international consensus, the Guidelines embrace the destination principle as the basic rule for the application of the VAT to international trade. This principle is set out in Guideline 3.1. as follows: “For consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption.”

#### *B.2.2 Implementing the destination principle - Guidelines 3.2 to 3.8*

15. The destination principle in theory stands for the proposition that the VAT is ultimately levied only on the final consumption that occurs within the taxing jurisdiction. Adoption of the destination principle as a theoretical norm for taxing consumption, however, is just the starting point for applying VAT to international trade in a consistent manner that avoids the risk of double taxation and unintended non-taxation, especially in an economy that is increasingly characterised by trade in services and intangibles.

16. Implementing the destination principle, *i.e.* adopting practical place of taxation rules that identify the jurisdiction in which final consumption occurs, raises a host of additional questions. Because consumption is not directly observable in many (if not most) cases, the identification of the jurisdiction in which final consumption occurs can be effectuated only through proxies that reflect predictions as to where final consumption is likely to occur. These proxies are generally based on features of the supply that are known or knowable at the time the tax treatment of the supply must be determined. The Guidelines identify such proxies for determining the place of taxation both for B2B supplies and for B2C supplies. The Guidelines concentrate on supplies of services and intangibles, not on supplies of goods. While place of taxation rules are needed for supplies of goods as well as for supplies of services and intangibles, implementing the destination principle with respect to cross-border supplies of goods is facilitated by the

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<sup>4</sup> Footnote 1 of the WTO’s *Agreement on Subsidies and Countervailing Measures* provides that “... the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.”

existence of border controls or fiscal frontiers.<sup>5</sup> Implementing the destination principle with respect to international trade in services and intangibles is more difficult, because the nature of services and intangibles is such that they cannot be subject to border controls in the same way as goods. For this reason, the Guidelines focus on supplies of services and intangibles.

17. The Guidelines' place of taxation rules for implementing or facilitating the implementation of the destination principle for consumption taxation of international trade in services and intangibles present separate rules for B2B supplies and B2C supplies. This distinction in the Guidelines reflects the fact that VAT systems around the world often implement different approaches for determining the place of taxation of B2B and B2C supplies.

18. The differentiation between B2B and B2C supplies is notably attributable to the different objectives underlying the taxation of each category of supplies in the staged collection process. The overriding objective of place of taxation rules for B2C supplies is to predict the place where the final consumer is likely to consume the services or intangibles supplied (the place of final consumption). The taxation of B2B supplies is merely a means of achieving the taxation of final consumption through the staged collection process. Place of taxation rules for B2B supplies therefore focus on where the business that purchases services or intangibles is likely to use its purchases to create the services or intangibles that final consumers will acquire (the place of business use), and on facilitating the flow-through of the tax burden to the final consumer while maintaining neutrality within the VAT system. In addition to the different objectives of the place of taxation rules for B2B and B2C supplies, VAT systems often employ different mechanisms to enforce and collect the tax for both categories of supplies. It is in light of these considerations that the Guidelines present separate Guidelines for determining the place of taxation for B2B supplies and for B2C supplies. The Guidelines point out clearly, however, that this does not constitute a recommendation to jurisdictions also to make that distinction in their national legislation. Furthermore, despite the Guidelines' articulation of separate place of taxation rules for B2B and B2C supplies, the rules in practical application are often closely aligned and, in some cases, the same rule may apply to B2B and to B2C supplies.<sup>6</sup>

19. The general rules for determining the place of taxation for cross-border supplies of services and intangibles recommended by the Guidelines may be summarised as follows:

- For B2B supplies, the general rule is that the place of taxation is the jurisdiction in which the customer is located (Guideline 3.2), and when the customer has establishments in more than one jurisdiction, the place(s) of taxation is (are) the jurisdiction(s) where the customer's establishment(s) using that service or intangible is (are) located (Guideline 3.4).
- For B2C supplies, the first general rule, which applies to on-the-spot supplies, is that the place of taxation is the jurisdiction in which the supply is physically performed. The physical performance rule is limited to supplies that:
  - are physically performed at a readily identifiable place and
  - are ordinarily consumed at the same time and place where they are performed, and
  - ordinarily require the physical presence of the persons performing and consuming the supply at the time and place where the supplies are physically performed (Guideline 3.5).

<sup>5</sup> It is recognised however that the operation of border controls may also face challenges notably in the context of the collection of VAT on low value consignments. See (OECD, 2015) *Addressing the Tax Challenges of the Digital Economy, Action 1: 2015 Final Report*, Annex C, OECD/G20 Base Erosion and Profit Shifting Project.

<sup>6</sup> For example, the general rule for B2C on-the-spot supplies in Guideline 3.5 is also suggested as a possible specific rule for B2B supplies in Guideline 3.7 (see Guidelines, paragraphs 3.119 and 3.166).

- For B2C supplies, the second general rule (for supplies not covered by the first general rule) is that the place of taxation is the jurisdiction in which the customer has his or her usual residence (Guideline 3.6).

20. The Guidelines recognise that there may be circumstances in which a specific place of taxation rule may function more effectively than the recommended general rules. They therefore provide an evaluation framework for determining the desirability of a specific rule in both the B2B and B2C contexts (Guideline 3.7) with the recommendation that the application of such specific rules should remain limited. The Guidelines also suggest that one such specific rule may be the allocation of taxing rights to the location of immovable property for internationally traded supplies of services and intangibles directly connected with such immovable property (Guideline 3.8).

### *B.2.3 The challenges to tax collection under the destination principle when the supplier is not located in the jurisdiction of taxation*

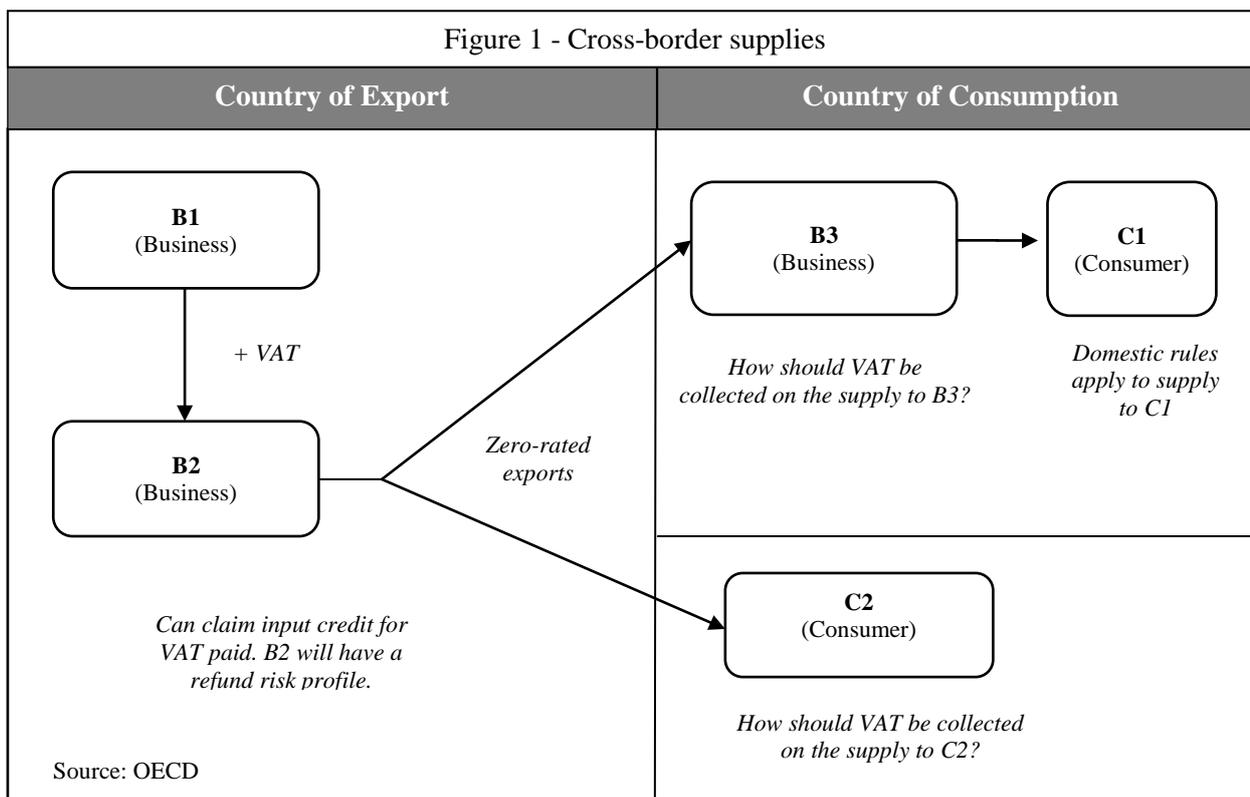
21. The preceding discussion lays the groundwork for examining the tax collection issue that is the focus of this chapter *i.e.* collecting VAT on supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation. The source of the challenge may be simply stated as follows: the application of the destination principle to supplies that cross international borders creates a jurisdictional break in the chain of the staged tax collection process that lies at the heart of the VAT.

22. The nature of the challenge may best be appreciated by first considering the operation of the VAT within a wholly domestic context, where this challenge does not arise. When all supplies are wholly domestic, with all suppliers and purchasers, whether businesses or final consumers, located in the same jurisdiction, the staged collection process works smoothly and seamlessly (at least in principle). Every business in the supply chain charges VAT on its taxable supplies, taking a credit against any VAT imposed on its inputs relating to those supplies, and remitting the difference to the taxing authority. The full right to deduct input tax through the supply chain, except by the final consumer, ensures that the burden of the tax does not rest on the business and reaches only the final consumption that the VAT is designed to tax. Because there is “enforcement jurisdiction” over all relevant participants in the staged collection process, *i.e.* the taxing authority can require all suppliers to comply with their tax collection obligations and there is no jurisdictional interruption in the VAT chain, the VAT functions as a tax on final consumption collected through a staged collection process.

23. The ensuing discussion considers the case in which two changes have been made to the previous example: first, it is assumed that somewhere along the supply chain there is a supply by a supplier in one jurisdiction to a customer in another; second, it is assumed that the supplier is not “located” in the jurisdiction of the customer, which, for purposes of this report means that the jurisdiction of the customer has no authority effectively to enforce a collection obligation upon the supplier. This jurisdictional break in the supply chain does not affect the core principles of the VAT. The VAT retains its essential character as a tax on final consumption collected through a staged collection process. Nevertheless, the jurisdictional break in the supply chain has profound consequences for how that staged collection process operates.

24. The following Figure 1 illustrates two variations on the foregoing scenario, with a B2B supply of services/intangibles in the country of export followed by a zero-rated cross-border supply (export):

- B2B supply to a business in the country of consumption (B2 to B3) followed by a domestic B2C supply (B3 to C1), or
- B2C supply in the country of consumption (B2 to C2).



- Under both scenarios described above, B2 makes a supply to a customer that is located abroad, *i.e.* to the business B3 or to the final consumer C2. Any input VAT incurred by B2 in relation to these supplies (*i.e.* the input VAT incurred on the supply received by B2 from B1) is no longer part of the staged collection process of a tax on final consumption, as it would be in the wholly domestic context. This follows from the fact that the jurisdiction from which the supply is made no longer has the taxing rights with respect to this supply under the destination principle. Consequently, any tax paid by the supplier to the jurisdiction from which the supply is made must in principle be refunded to this supplier. This is typically accomplished by “zero-rating” the supply in the jurisdiction from which the supply is made, thereby making it “free of VAT” in the supplier’s jurisdiction, and entitling the supplier to a refund of any input VAT paid to that jurisdiction with respect to that supply.<sup>7</sup>
- Due to this jurisdictional break in the chain of the staged collection process for VAT, the process must effectively begin all over again in the customer’s jurisdiction (the country of

<sup>7</sup> Any VAT previously remitted with respect to the supply in the supplier’s jurisdiction by suppliers earlier in the supply chain would already have been freed of VAT by the successive businesses’ deduction of input tax with respect to such supply.

consumption in the Figure 1 above), which is the jurisdiction of destination and which therefore possesses the taxing rights with respect to that supply. Accordingly, basic VAT principles require that the VAT and associated collection mechanisms be designed to implement the destination principle in the jurisdiction of the customer with tax ultimately resting only on the final consumer through the staged collection process.

- Because the supplier is not located in the jurisdiction of taxation (*i.e.* the jurisdiction of the customer, the country of consumption in the Figure 1 above), the question becomes how the staged collection process can most effectively be implemented, and what factors should be considered by jurisdictions in determining the most appropriate approach to such collection under the circumstances surrounding the supply.

25. When it comes to international trade in goods, the mechanisms for collecting VAT in accord with the destination principle are relatively straightforward and effective. The supply of a good is in principle subject to VAT in the jurisdiction where the good is located at the time of the transaction. When a transaction involves goods being moved from one jurisdiction to another, the exported goods are generally “free of VAT” in the seller’s jurisdiction (and are freed of any input VAT via successive businesses’ deductions of input tax), whilst the imports are subject to the same VAT as equivalent domestic goods in the purchaser’s jurisdiction. The VAT on imports is generally collected at the same time as customs duties, and, for the most part, border controls provide an effective mechanism for assuring the collection of VAT on cross-border supplies of goods at their destination, even though the supplier is not located in the jurisdiction of taxation.<sup>8</sup> In addition, in the B2B context, some jurisdictions postpone collection of the tax on imported goods until declared on the importer’s next VAT return.

26. When it comes to international trade in services and intangibles, the nature of services and intangibles is such that border controls no longer offer an effective mechanism for collecting the VAT in the place of taxation in accord with the destination principle, when the supplier is not located in the jurisdiction of taxation. Because services and intangibles generally cannot be stopped at the border, other mechanisms must be employed for collecting VAT on supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation. This chapter explores the alternative collection mechanisms that may be available in this context and considers the potential advantages and disadvantages of the various options. In connection with each of the possible alternatives, it is important to recognise the critical role that exchange of information and administrative cooperation can and should play in addressing and overcoming the challenges created by the jurisdictional break in the supply chain.<sup>9</sup>

### **C. Options for collecting VAT on supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation**

27. The main alternative approaches to collecting VAT on supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation can be identified as including reliance, individually or in some combination, on (1) suppliers, (2) customers and (3) intermediaries. Depending on developments in technology, automated systems may play a central role in facilitating tax collection in the future. At the present time, technology is more realistically viewed as a tool to support the operation of the existing collection regimes. This chapter considers the design and possible advantages and disadvantages of each of these approaches as applied to international trade in services and intangibles in cases where the supplier is not located in the jurisdiction of taxation (“foreign suppliers”) with special focus on the collection mechanisms as recommended by the Guidelines.

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<sup>8</sup> See footnote 6 above.

<sup>9</sup> See Guidelines, paragraphs 3.152 – 3.154 and Chapter 4.

28. In evaluating the pros and cons of alternative approaches one should keep in mind that the choice between options is not mutually exclusive. The determination of the appropriate collection regime may well involve some combination of the various approaches that are described in this chapter.

### ***C.1 Supplier collection (registration-based collection regimes)***

29. The correct charging, collection and remittance of VAT, and the associated reporting obligations, are traditionally the responsibility of suppliers. Relying on suppliers for VAT collection generally operates effectively when the supplier is located in the jurisdiction of taxation because that jurisdiction possesses the authority to impose and enforce collection and related obligations upon the supplier.

30. When the supplier is not located in the jurisdiction of taxation, however, although that jurisdiction may possess the legal power to require the supplier to register and to charge, collect, and remit any tax due, it may nevertheless lack the ability to effectively enforce collection and related obligations upon the supplier. The challenges for tax administrations in the jurisdiction of taxation may include establishing that the foreign supplier has made supplies that are subject to VAT in their jurisdiction under the destination principle; enforcing collection and remittance of tax by foreign suppliers and follow-up enforcement actions such as accessing books and records; and creating auditing and collection procedures for outstanding taxes. As international trade in services and intangibles continues to grow, tax administrations may need to deal with increasingly large numbers of foreign businesses that have no physical presence in their jurisdiction.

31. The obligation for suppliers to register and account for VAT in a jurisdiction where they are not located may also create challenges for such suppliers. This may be burdensome for large enterprises and even more so for small and medium sized enterprises, particularly when such a requirement arises in multiple jurisdictions (see Box 1).

**Box 1: Possible obligations resulting from a VAT registration requirement for a foreign business**

Other than the task of mastering the basic requirements for VAT registration and submission of periodic VAT returns, successfully navigating the VAT system in any jurisdiction generally involves understanding and evaluation of the following:

- VAT legislation
- Tax authority guidance
- Case law, which clarifies the practical application of the legislation and guidance
- Human and technical resources (external and internal) required to assist with the country-specific practicalities and to set up an internal and external process to facilitate accurate and timely compliance with the local requirements

This is generally challenging to accomplish in a single foreign jurisdiction and substantially more challenging when multiple foreign jurisdictions are involved. Being unable to communicate in the local language, particularly where complex procedural matters are involved, such as dealing with a foreign court system, will often mean that the business has no option but to pay for local support.

Specific obligations associated with a VAT registration may be summarised as follows:

- To obtain information about the local VAT registration process and the VAT return itself in a language that can be understood.
- To understand local rules regarding the possible appointment of a fiscal representative and to appoint a representative, if necessary.
- To arrange a bank guarantee and/or open a bank account, if required.
- To understand how to differentiate between B2B and B2C supplies if different rules apply to B2B and B2C.
- To understand how thresholds (wherever available) operate.
- To understand the applicable collection mechanisms.
- To understand the VAT rates applicable in the jurisdiction in question and to implement systems changes required to cope with changing the local rate of VAT.
- To understand invoicing rules and to amend IT systems accordingly.
- To understand local rules on a range of complex and often very specific VAT issues, such as time limits and procedures for making corrections.
- To understand special rules, if any, addressed to small suppliers.
- To store and retain documents in accord with local legislation.
- To actively monitor legislative and administrative updates, which may require business and systems changes.
- To deal with tax audits, taking advice and obtaining local support where necessary.
- To deal with disputes, foreign court systems (including gaining knowledge of time limits, procedures and protocols).
- To understand the interaction with other taxes and rules in the local jurisdiction.

32. This leads to the question: what are the design options for a regime for collecting the VAT on supplies of services and intangibles from foreign suppliers that will increase the level of compliance and likelihood of effective enforcement under such a regime?

### *C.1.1 Simplified registration and compliance regimes: the recommended approach for B2C supplies.*

33. The Guidelines point out that the highest feasible levels of compliance by foreign suppliers are likely to be achieved if compliance obligations in the jurisdiction of taxation are limited to what is strictly necessary for the effective collection of the tax. Appropriate simplification is particularly important to facilitate compliance for businesses faced with obligations in multiple jurisdictions. Where traditional registration and compliance procedures are complex, their application for foreign suppliers may lead to non-compliance or to certain suppliers declining to serve customers in jurisdictions that impose such burdens.<sup>10</sup> Moreover, complexity may create an uneven playing field between foreign and domestic suppliers resulting in market distortions and, ultimately, substantial impacts on governments' VAT revenues. The Guidelines therefore recommend that jurisdictions that choose to adopt a supplier collection regime in the context of international B2C trade in services and intangibles implement a simplified registration and collection regime to facilitate compliance for foreign suppliers.

#### C.1.1.1 Main features of a simplified registration and collection regime as recommended by the Guidelines

34. The Guidelines characterise simplified registration-based collection regimes as “at the present time, the most effective and efficient approach to ensure the appropriate collection of VAT on cross-border business-to-consumer supplies.”<sup>11</sup>

35. There is no one-size-fits-all approach to simplified regimes for facilitating collection of VAT from foreign suppliers. Nevertheless, the Guidelines provide a general description of the possible design and operation of such simplified regimes and an overview of its main features.

36. The simplified registration and collection regime would operate separately from the traditional registration and collection regime, without the same rights, such as input tax recovery, or obligations such as full reporting as in a traditional regime.<sup>12</sup> In order to assist taxing jurisdictions in evaluating and developing a simplified supplier collection regime, the Guidelines identify the following main features of such a regime, balancing the need for simplification and the need of tax administrations to safeguard the revenue:<sup>13</sup>

- Simplified registration procedure, with required information kept to a minimum and the availability of online registration at the tax administration's website;
- No input tax recovery, but suppliers may register under the normal collection regime and recover input tax according to normal rules;<sup>14</sup>

<sup>10</sup> Guidelines, paragraph 3.132.

<sup>11</sup> Guidelines, paragraph 3.131.

<sup>12</sup> Guidelines, paragraph 3.133. In most cases, a supplier with no location in a jurisdiction would not incur any input tax for which it would be entitled to recovery, so that the denial of input tax recovery would not subject it to irrecoverable input tax. If such a supplier were in a position where it would incur irrecoverable input tax, however, it could choose to register under the traditional regime.

<sup>13</sup> Guidelines, paragraphs 3.135 – 3.151. As noted above, the Guidelines' description of a simplified regime is based on the assumption that it is limited to B2C supplies. As further noted in C.1.2. below, however, such regimes may also be appropriate in the B2B context, subject to whatever modifications may be appropriate due to different characteristics of or circumstances surrounding B2B and B2C supplies.

<sup>14</sup> Any input-VAT should normally be recoverable for the foreign supplier if it also deductible or recoverable for domestic suppliers in accordance with the Guidelines on Neutrality included in Chapter 2 of the Guidelines. Of course, it would lie within the discretion of a jurisdiction to decide on the appropriate input-VAT recovery mechanism through which the neutrality principle will be assured.

- Simplified returns, with option to file electronically;
- Electronic payment methods;
- Simplified and electronic record keeping requirements;
- Elimination of invoicing requirements, or issuing invoices in accord with rules of the supplier's jurisdiction;
- Online availability of all information necessary to register and comply with simplified regime;
- Use of third-party service providers to assist in tax compliance;
- Compliance burdens proportional to revenues involved and maintaining neutrality between domestic and foreign suppliers.

37. Chapter 3 of this report provides more detailed guidance on the operational aspect of such simplified regimes.

#### C.1.1.2 B2C supplies and B2B supplies under simplified registration and collection regimes

38. While the Guidelines recommend the implementation of a simplified registration and collection regime only in the context of B2C suppliers of services and intangibles, it is recognised that such regimes should not necessarily be confined to B2C supplies. Jurisdictions may choose to implement a simplified registration and collection regime for both B2C and B2B cross-border trade in services and intangibles, because, for example, their VAT regime does not generally distinguish between B2C and B2B transactions.<sup>15</sup>

39. The Guidelines recognise that there is an alternative collection mechanism, specifically, the reverse charge mechanism that generally works more effectively in the B2B context than does supplier collection when the supplier is not located in the jurisdiction of taxation. The reverse charge mechanism shifts the liability to account for the tax from the supplier to the customer. Where only B2B supplies are involved, the application of the reverse charge mechanism relieves the foreign supplier of any requirement to be identified for VAT purposes or to account for tax in the jurisdiction of taxation, thus minimising the administrative burden and complexity for foreign suppliers. It is generally recognised, however, that the reverse charge mechanism is not a viable collection mechanism in the B2C context. Accordingly, when a VAT regime's general rules distinguish between B2B and B2C supplies, it may be appropriate to confine the application of the simplified registration and collection regime to B2C supplies. Such an approach would not necessarily reflect a judgment that the simplified supplier-based regime would fail to provide similar benefits in the B2B context. Instead it would more likely reflect a determination that there is a customer-based collection regime that would work more effectively in the B2B context than the simplified supplier-based regime for collecting the VAT from foreign suppliers (for a more detailed discussion on this issue, see C.2.2 and C.2.3).

40. It is recommended therefore that jurisdictions that operate a simplified regime in a B2C context retain the reverse charge (wherever applicable) as an available separate collection mechanism for B2B supplies.

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<sup>15</sup> Guidelines, paragraph 3.149.

### C.1.1.3 Policy considerations concerning simplified registration and collection regimes

41. In some respects, simplified supplier collection regimes offer the most obvious option for facilitating effective collection of VAT on international supplies of services and intangibles from foreign suppliers. First, it follows the basic approach to the staged collection process that lies at the heart of VAT administration, namely, collection by the supplier from the customer. Second, for those regimes that do not distinguish between B2C and B2B transactions, it offers an approach that can be applied to all cross-border supplies of services and intangibles without requiring jurisdictions to create separate regimes for B2C and B2B supplies. Moreover, it avoids the difficulties for suppliers of having to distinguish between businesses and consumers in complying with the country's tax regime. Third, at least for B2C supplies, it is not clear that there is a better alternative. Customer collection does not appear to be a viable option.<sup>16</sup>

42. Notwithstanding their advantages, simplified registration and collection regimes have their disadvantages. Although such regimes may facilitate collection of VAT for foreign suppliers through simplified registration and compliance procedures, they may also present their own challenges. For example it may be more difficult for business customers to obtain sufficient evidence to satisfy input tax claims (due, in particular, to the elimination of invoicing requirements that are often applied under those regimes). These competing concerns would therefore involve a trade-off between the need to make requirements simple for foreign suppliers and the need to make sufficient information available to domestic businesses to substantiate their input tax claims. The most important disadvantage of simplified registration and collection regimes may be the availability of what may be a better alternative, at least for B2B supplies, namely a reverse charge mechanism, which is explored below (see C.2.1). In circumstances in which a jurisdiction generally distinguishes between B2C and B2B transactions for VAT purposes, a reverse charge mechanism for B2B supplies may offer a better option than a simplified supplier collection regime from the perspective of "enforcement" jurisdiction. Considering that the staged collection process for VAT as applied to international trade must effectively begin all over again in the customer's jurisdiction (as explained in B.2.3. above), relying on the recipient business within the jurisdiction of taxation to collect the tax is likely to involve far less risk to the revenue than a supplier collection regime (see C.2.1, below). Indeed, relying on the simplified regime creates the additional risk that the business customer may claim an input tax credit even though the supplier did not collect the output tax.

43. Even if a jurisdiction does not generally distinguish between B2C and B2B transactions in its VAT regime, it may therefore wish to weigh the possible benefits in effective enforcement through implementation of a reverse charge mechanism for B2B supplies against the costs of creating the legal and administrative framework for implementing a distinction between B2C and B2B supplies. Indeed, when it is introduced within the broader context of the implementation of simplified registration and collection regime, the costs of creating of a distinction between B2C and B2B supplies may turn out to be limited (depending on the interaction with existing domestic taxation rules).

#### *C.1.2 Registration-based collection regimes – Key policy and design considerations.*

44. Chapter 2 of this report discusses a number of key issues for tax authorities to consider when designing and implementing a registration-based collection regime. These considerations may be equally relevant for regimes with specific simplification measures and for registration-based regimes without simplifications.

45. The main focus of Chapter 2 is on the following issues: (i) policy considerations informing the decision whether or not to implement a threshold below which foreign suppliers are relieved of the obligation to register and collect and remit the VAT in the taxing jurisdiction; (ii) the possible role of

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<sup>16</sup> See Section C.2

service providers specialised in providing tax compliance solutions that facilitate compliance by foreign suppliers with their VAT obligations under a registration-based collection regime; (iii) approaches for determining and evidencing the status and location of the customer (where required) under registration-based collection regimes.

## **C.2 Customer collection**

### **C.2.1 Reverse charge or self-assessment mechanisms - The recommended approach for B2B supplies**

46. The Guidelines addressing collection mechanisms in connection with B2B supplies by foreign suppliers recommend that the business customer be liable to account for any tax due to avoid unnecessary burdens on suppliers.<sup>17</sup> This can be achieved through the reverse charge mechanism (sometimes referred to as “tax shift” or “self-assessment”) where that is consistent with the overall design of the national consumption tax system. Under this procedure, the customer is typically required to declare the VAT due on the supply received from the foreign supplier as output tax on the relevant VAT return. The rate to be applied is the rate applicable in the customer’s jurisdiction. The customer is then entitled to input tax deduction to the extent allowed under the rules of its jurisdiction.

47. If the customer is entitled to full input tax deduction on the relevant supply, it may be that local VAT legislation does not require declaration of the output tax under the reverse charge mechanism.

48. The reverse charge mechanism has a number of advantages. First, the tax authority in the jurisdiction of business use can verify and ensure compliance since that authority has personal jurisdiction over the customer. Second, the compliance burden is largely shifted from the supplier to the customer and is minimised since the customer has full access to the details of the supply. Third, the administrative costs for the tax authority are also lower because the supplier is not required to comply with tax obligations in the customer’s jurisdiction (*e.g.* VAT identification, audits, which would otherwise have to be administered, and translation and language barriers). Finally, it reduces the revenue risks associated with the collection of tax by non-resident suppliers, whether or not that supplier’s customers are entitled to deduct the input tax.<sup>18</sup>

49. In many VAT systems that operate an invoice-credit method, the VAT on cross-border B2B supplies of services and intangibles is collected by the reverse charge mechanism. Nevertheless, the reverse charge mechanism is not applied in all jurisdictions and, where it is implemented, the rules may differ from country to country.

### **C.2.2 Reverse charge or self-assessment mechanisms - Not recommended for B2C supplies**

50. While self-assessment mechanisms generally work well in a B2B context, it is recognised that they are largely ineffectual in a B2C context. In a cross-border trade situation, this would involve the final consumer accounting for the VAT on services and intangibles acquired from foreign suppliers to the tax authorities. The final consumer could for instance be required to include this VAT in his or her own income tax return (this, of course, assumes that every consumer of a supply also completes an income tax

<sup>17</sup> Guidelines, paragraphs. 3.47, 3.64

<sup>18</sup> A reverse charge mechanism may give rise to challenges created by Missing Trade Fraud, when the fraudster who acquires (or purports to acquire) the zero-rated cross-border supply and then charges the standard rate on the domestic supply disappears before remitting the VAT collected on the domestic supply (even though under those circumstances the taxing jurisdiction would have the authority effectively to enforce a collection obligation). In this connection, it may be recalled that the Guidelines generally assume that parties are acting in good faith and that all transactions are legitimate, while recognising that jurisdictions, in response to or to prevent evasion, may take proportionate measures to protect against evasion or revenue loss (see the Guidelines, paragraphs 4.22 – 4.23).

return). Another possibility would be to require the consumer to complete a separate VAT return, remitting the VAT to the tax authorities.

51. The Guidelines observe that “the reverse charge mechanism does not offer an appropriate solution for collecting VAT on business-to-consumer supplies of services and intangibles from non-resident suppliers”. The level of compliance with a reverse charge mechanism for B2C supplies is likely to be low, since final consumers have little incentive to declare and pay the tax due, at least in the absence of meaningful sanctions for failing to comply with such an obligation. Moreover, enforcing the collection of small amounts of VAT from large numbers of final consumers is likely to involve considerable costs that would outweigh the revenue involved.

52. It is for this reason that a substantial portion of the Guidelines on B2C supplies focuses on guidance for jurisdictions to facilitate collection of tax by remote suppliers, because, as a practical matter, unless such suppliers collect the tax, little tax on supplies of services and intangibles by foreign suppliers is likely to be collected.

### *C.2.3 Withholding mechanisms*

53. VAT withholding regimes are a variation on customer-based mechanisms for collecting VAT from foreign suppliers. There are various ways in which a withholding mechanism may operate. In summary, such regimes require customers to withhold and settle the VAT on behalf of the foreign supplier. If the customer is a fully taxable business, it is then entitled to an input credit on the VAT that it has withheld and remitted to the tax authorities. The parties should then reflect their respective positions under the VAT in their pricing.

54. In practice, such a system has the same effects as a reverse charge mechanism (requiring the customer rather than the supplier to pay the VAT) when the customer is liable to pay the full amount of VAT but with some legal differences in terms of invoicing and liability (i.e. under a withholding regime the VAT liability may remain at the level of the supplier).

55. One major challenge of this system is that it expects suppliers to be familiar with the tax rules and rates in the jurisdiction of taxation, not only when VAT liability arises but also when agreeing on the price, in order that the proper amount may be charged. This may be well before the time of the actual supply and the taxable event. It also presumes that the purchaser will be familiar with the VAT rules and will carry out the withholding and settlement obligations. This may not in fact be the case particularly when the customer is a small trader or a private customer. A withholding regime also imposes the responsibility, and the burden, on customers to differentiate between foreign and domestic suppliers.

56. In addition, implementing a withholding regime can create challenges for accounting and invoicing systems that may not be designed to deal with requirements of such a regime. Because of these challenges, withholding regimes may not be appropriate for automated systems, which may not be capable of dealing with such challenges.

### *C.2.4 Policy considerations concerning customer collection mechanisms*

57. As customer collection mechanisms are generally applied only in the B2B context, they typically require the supplier to determine whether its customer is a business or a private consumer. This can create administrative challenges for the supplier in making that determination. It can also create opportunities for fraud, if a private consumer or an unregistered business falsely claims it is a registered business that will account for the tax under the reverse charge mechanism, thereby relieving the supplier of any obligation to collect and remit VAT in the jurisdiction of taxation. These challenges, which in principle can be addressed through domestic legislation penalising such fraud, must be weighed against the revenue risks of

relying on supplier collection when the supplier is not located in the jurisdiction of taxation. See C.1. above.

58. Most important, customer collection mechanisms do not appear to offer an effective solution for the collection of VAT on supplies of services and intangibles from foreign suppliers, if a jurisdiction's VAT system does not recognise a distinction between B2B and B2C transactions. As customer collection mechanisms are ineffectual for the collection of VAT on B2C supplies by foreign suppliers, such a jurisdiction would need to explore alternative measures to ensure the effective collection of VAT on these B2C supplies. One possible alternative for such jurisdictions would combine the adoption of a customer collection mechanism for cross-border B2B supplies of services and intangibles with a simplified registration and collection regime for cross-border B2C supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation.

59. It is ultimately for each jurisdiction whose VAT regime does not differentiate between B2B and B2C supplies to assess whether the benefits of adopting a customer-based mechanism for collecting the VAT from foreign suppliers of services and intangibles in a B2B context, outweigh the costs of implementing a distinction between B2C and B2B supplies to accommodate the adoption of such a mechanism. On the one hand, it may be argued that because a customer-based collection regime is more effective than a supplier-based collection regime to collect VAT from such foreign suppliers in a B2B context, there is a good case for jurisdictions to implement a distinction between B2C and B2B supplies. Differentiating between B2B and B2C may facilitate the application of collection mechanisms that are better adjusted to the various types of transactions, and this may allow businesses to operate more efficiently, helping to ensure a level playing field and to mitigate distortion of competition, while helping to safeguard VAT revenues for the tax authorities. On the other hand, it may be argued that the costs of reconfiguring the pre-existing regime to distinguish between B2B and B2C supplies in order to accommodate the adoption of a customer-based collection mechanism and/or, more fundamentally, the limitations to the capacity of a jurisdiction effectively to implement and administer a customer-based collection mechanism, may outweigh the benefits of doing so. In undertaking such a cost/benefit analysis, jurisdictions may wish to recall the key considerations emphasised earlier in this chapter, *i.e.* that the staged collection process for VAT as applied to such trade must effectively begin all over again in the customer's jurisdiction (see under B.2.3. above) and that relying on the recipient business within the jurisdiction of taxation to collect the tax is likely to involve far less risk to the revenue than a supplier collection regime (see under C.2.1. above).

### **C.3 Intermediaries**

60. Intermediaries that are involved in some way in the supply chain, particularly in digital supply chains, could potentially play an important role in collecting and accounting for VAT on behalf of foreign suppliers and are, indeed, already playing an important role in certain cases. This often involves intermediaries supporting compliance with registration-based collection regimes.

61. As business models and technology continue to develop, the role and types of intermediaries in supply chains are becoming increasingly complex and this may affect the way tax should or could be collected.

62. This section of this report is intended to provide a broad overview of the general approaches used by tax authorities to define the role of certain types of intermediaries in collecting VAT on supplies of services and intangibles by foreign suppliers. These approaches are intended to increase the efficiency and effectiveness of the collection of VAT particularly with respect to online sales, which continue to grow in volume and complexity. Both tax authorities and the business community have identified a clear need for further internationally agreed standards and guidance in this area and the OECD Working Party No.9 on

Consumption taxes has committed to developing further work in response to this request as a matter of priority. This will be the subject of a separate report.

63. Against this background this report broadly distinguishes between two approaches for defining the role and responsibilities of intermediaries in the VAT compliance process:

- i. The contractual approach, which is based on the relevant contractual and related arrangements between the parties;
- ii. The deemed supplier approach, which deems the intermediary to be the supplier for VAT compliance purposes, based on prescribed facts and circumstances.

### *C.3.1 The contractual approach*

64. Such an approach follows the legal relationships as determined by the terms of the contractual and related arrangements between the parties (*i.e.* the business agreement).<sup>19</sup> Under this approach, if the parties' business agreement establishes an arrangement under which the intermediary fulfils the supplier's obligations to the taxing authorities, the taxing authorities will treat the intermediary as satisfying the supplier's tax compliance obligations to the taxing authority. This will notably be the case if the intermediary is in the possession of the information needed to make the appropriate taxing decision and to meet the supplier's compliance obligations, or if it has committed to doing so. Such an approach may produce greater certainty and consistency in determining the responsibility to collect and account for the VAT on supplies generated and/or made through intermediaries, especially in the context of digital trade.

65. However, challenges may arise in cases where the contractual and related arrangements are unclear and/or contradictory. This may occur in long, often digitalised, supply chains that can span multiple jurisdictions and involve multiple suppliers and/or intermediaries. Practical challenges may add to the legal complexity, particularly when the intermediary who has taken on the contractual responsibility to fulfil specific VAT compliance obligations ends up in a position in the value chain that makes it difficult or impossible in practice to fulfil these obligations (*e.g.* because it has no direct connection to the tax authorities in the taxing jurisdiction).

### *C.3.2 Deemed supplier approach*

66. This approach introduces presumptions under which an intermediary is deemed to be the statutory designated supplier for VAT compliance purposes. Such an approach is being implemented increasingly in the context of digital trade. Such deeming provisions are generally limited to intermediaries that control key aspects of a digital supply, such as defining the terms and conditions under which the digital supply is made, charging the customer, and/or delivering the sold item. Intermediaries that play a role that is considered less directly connected to the supply from a VAT perspective, such as payment processors or technical intermediaries that only make internet capacity available for carrying content, are generally not deemed to acquire the status of the supplier for VAT compliance purposes. The figure in Box 2 below illustrates this approach.

67. Under this approach, the VAT due is collected by fewer parties that can be monitored more easily (*e.g.* digital platforms). Depending on their business model, such parties presumably have greater capacity to comply with the relevant tax obligations and may have better access to the information required to make

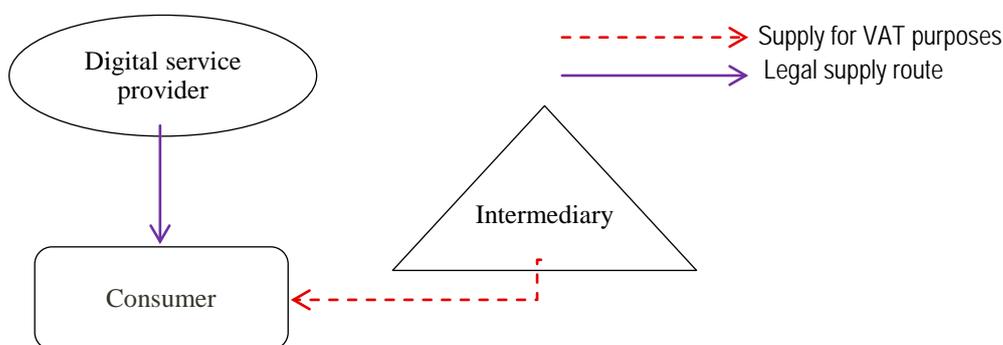
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<sup>19</sup> According to Box 3.1 of the Guidelines: "Business agreements consist of the elements that identify the parties to a supply and the rights and obligations with respect to that supply. They are generally based on mutual understanding."

the appropriate taxing decision than the wide range of often small online traders. This approach could significantly reduce trade obstacles caused by the compliance burden associated with doing business in the global digital market for small and medium businesses. This approach may also increase certainty for parties involved in the supply, especially where there is considerable difficulty in determining the VAT liability of the supplier and the various intermediaries on the basis of their contractual and related arrangements. On the other hand, careful consideration is required when designing and implementing deemed supplier provisions, specifically, to avoid exposing intermediaries to excessive liabilities or obligations that may prevent them from entering or continuing activity in certain markets.

68. The deemed supplier approach requires clear guidance on the invoicing and accounting requirements both at the level of the actual supplier (*e.g.* the actual seller of a digital service) and the intermediary that is deemed to be the supplier for VAT purposes. This includes guidance on the operation of thresholds (including registration thresholds or sales thresholds below which no VAT is payable on certain supplies), when such thresholds are available.

### Box 2: Deemed supplier approach



The intermediary is interposed into the digital supply chain. Assuming that the intermediary meets the presumptions/conditions to be considered as the supplier for VAT compliance purposes then:

- The supply made by the supplier of the digital service to the consumer is considered to be a supply by the intermediary to the consumer and therefore the intermediary must calculate and remit the VAT due to the tax authorities in the jurisdiction of consumption;
- For the VAT-treatment of the supply by the intermediary to the digital service provider there are currently two available approaches: (i) the intermediary is seen to have received and on-supplied the digital service (re-seller model), and (ii) the intermediary is considered to supply services to the digital service provider (agency or facilitations services).

Source: OECD

#### C.4 Automated systems

69. While it is apparent that automated systems and other technology-based systems have a potentially central role to play in facilitating tax collection on cross-border supplies of services and intangibles from foreign suppliers, at the present time such systems are more realistically viewed as tools that can be usefully employed, in appropriate circumstances, to support existing collection regimes. As technology and business models continue to evolve, automated systems and other technology-based systems are likely to play an increasingly important role in facilitating cross-border tax collection of services and intangibles from foreign suppliers.



## Chapter 2

### Registration-based collection regimes - Key policy and design considerations

#### A. Introduction

70. Chapter 2 of this report discusses a number of key policy and design issues for tax authorities to consider when designing and implementing a registration-based collection regime. These considerations may be equally relevant for regimes with specific simplification measures and for registration-based regimes without simplifications.

71. This chapter discusses the following issues: (i) policy considerations informing the decision whether or not to implement a threshold below which foreign suppliers are relieved of the obligation to register and collect and remit the VAT in the taxing jurisdiction; (ii) the possible role of service providers specialised in providing tax compliance solutions that facilitate compliance by foreign suppliers with their VAT obligations under a registration-based collection regime; (iii) approaches for determining and evidencing (where required) the status and location of the customer under registration-based collection regimes.

#### B. Thresholds

72. For the purposes of this discussion, the term threshold refers to a level of supplies (measured in currency) into the jurisdiction of taxation below which a foreign supplier is relieved of the requirement to register and to collect and remit the VAT on these supplies in that jurisdiction.

73. The Guidelines<sup>1</sup> recommend that jurisdictions implement a registration-based regime for collecting the VAT on B2C supplies of services and intangibles by foreign suppliers. At the same time, the Guidelines recommend that such a registration-based collection regime be implemented without creating compliance and administrative burdens that are disproportionate to the revenues involved or to the objective of achieving neutrality between domestic and foreign suppliers. They specifically acknowledge that thresholds have been implemented by some jurisdictions as a tool to minimise the risk of disproportionate administrative and compliance costs for business (notably SMEs) and tax administrations.

74. The Guidelines<sup>2</sup> recognise that the introduction of thresholds deserves careful consideration and that a balance should be sought between the desire to minimise administrative costs and compliance burdens for tax administrations and foreign suppliers and the need to maintain an even playing field between domestic and foreign businesses.

75. Tax authorities may need to review the following key policy aspects when considering the possible implementation of a threshold in the context of a registration-based collection regime for supplies of services and intangibles by foreign suppliers:

- **Neutrality aspects:** the potential impact of a threshold on the competitive position of domestic and foreign suppliers;
- **Simplification aspects:** the potential reduction of compliance costs for foreign businesses, particularly for SMEs (for which costs of foreign registrations may be prohibitive in light of

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<sup>1</sup> Guidelines, paragraph 3.131

<sup>2</sup> Guidelines, paragraph 3.151

the low sales volumes) and for foreign suppliers who may not have a sufficient level of trade within the taxing jurisdiction. Note that the positive effect of thresholds on compliance costs for businesses trading abroad may be reduced by the need for these businesses to monitor the often widely varying thresholds in different jurisdictions (this issue could be also minimised by giving foreign suppliers the option to register voluntarily regardless of the level of their turnover);

- **The impact on the efficiency and effectiveness of tax administration:** this includes the possible reduction of administrative costs for tax authorities that result from removing the need to pursue the collection of potentially large numbers of small tax payments (for which collection and compliance costs may exceed revenues); and the increased efficiency and effectiveness of tax administrations that can concentrate their administrative capacity on fewer taxpayers with presumably higher tax liabilities. These potential efficiency gains have to be balanced against the additional administrative cost and complexity for tax administrations attributable to the administration of a threshold for foreign suppliers;
- **The determination of the level of the threshold,** including the calculation method. Considerations include the question whether the threshold should be based on the supplier's turnover in the taxing jurisdiction or its worldwide turnover (including the question how the tax administration could monitor such a threshold); and the question whether the threshold should be limited to B2C supplies into the jurisdiction of taxation or should take account of all types of supplies made by the foreign supplier in that jurisdiction;
- **The implementation of anti-abuse measures,** *e.g.* to counter foreign businesses artificially dividing their activities among a number of entities to stay below the threshold;
- **The provision of clear guidance** on the operation of the threshold and the need to make this information accessible to foreign suppliers in multiple languages.

### C. The role of third-party service providers in facilitating foreign suppliers' VAT compliance

76. The Guidelines<sup>3</sup> recognise that “compliance for foreign suppliers could be further facilitated by allowing such suppliers to appoint a third-party service provider to act on their behalf in carrying out certain procedures, such as submitting returns. This could be especially helpful for small and medium enterprises and businesses that are faced with multi-jurisdictional obligations”. Similar advantages may be recognised for tax authorities, as such specialised service providers are likely to improve the quality of compliance by foreign suppliers with their VAT obligations.

77. The functions of such a third-party service provider in VAT compliance can range from purely administrative tasks, such as VAT calculation and remittance, return filing and record keeping, to assuming full responsibility for the foreign supplier's obligations abroad.

78. The involvement of specialised third-party service providers may be particularly beneficial in reducing compliance burdens and administrative costs, when they can support VAT compliance for their business clients (*i.e.* businesses that make supplies subject to VAT abroad) in multiple jurisdictions from one location (*i.e.* without the requirement of being physically established or otherwise present in these tax jurisdictions). The enlistment of specialised service providers in facilitating foreign supplier's VAT compliance may be subject to the requirement that they provide sufficient proof and assurance of their

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<sup>3</sup> Guidelines, paragraph 3.148

compliance standards and experience. The rapid development of technology has made such services increasingly accessible for businesses that make supplies abroad, including SMEs.

### ***C.1 Fiscal representatives***

79. Jurisdictions often require foreign suppliers to appoint a fiscal representative who is a resident or has an establishment within the jurisdiction to collect and remit the VAT on their supplies. This was particularly common in the past, when such cross-border transactions were relatively limited in number and individual transactions involved relatively high amounts. The requirement to appoint such a fiscal representative may be motivated by a range of policy considerations such as the jurisdiction's limited capacity in digital tax administration, the fiscal representative's understanding of local language and of national laws and its easier access to accounting and other documentation. Notwithstanding the potential of such a fiscal representative to facilitate tax collection and enforcement, the mandatory nature of such an appointment may result in unintended consequences. Foreign suppliers facing the obligation to appoint such a person in the taxing jurisdiction may decide to restrict their trade with that jurisdiction or inadvertently fail to comply with the rules of the taxing jurisdiction, particularly when sales for relatively low amounts and/or with relatively small profit margins are involved. For a small business with a modest turnover in the taxing jurisdiction, the cost of maintaining a fiscal representative there may be disproportionate to its revenue, particularly in cases where the fiscal representative shifts the financial risks of non-compliance to the foreign supplier by requiring it to post security. Suppliers may also have significant difficulties in engaging a representative that would be willing to assume such a role in cases where (s)he would be solely or jointly liable for any VAT liability of the foreign supplier. These unintended consequences merit careful consideration when designing a registration-based collection regime.

### **D. Approaches for determining and evidencing the status of the customer**

80. Where a jurisdiction applies different collection mechanisms for B2B and B2C supplies by foreign suppliers, determining the status of the customer (business or non-business) is an indispensable step for the foreign supplier to determine its compliance obligations in this jurisdiction. The Guidelines<sup>4</sup> therefore recommend that tax authorities that apply such a differentiated approach provide clear practical guidance on how suppliers can establish the status of their customer.

81. Jurisdictions may consider adopting a requirement for suppliers to provide one or more indicia to establish their customer's status. An indicative list of such indicia for determining the status of the customer is in the Box 3 below. It builds on countries' research and experience in designing and operating regimes for the collection of VAT on supplies by foreign suppliers within a VAT system that differentiates between B2B and B2C supplies.

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<sup>4</sup> Guidelines, paragraph 3.8

**Box 3: Indicia for determining the status of the customer - Indicative typology**

- An identification number, such as a VAT registration number or a business tax identification number indicating the business identity and registration of the customer. The Guidelines, in paragraph 3.8, encourage jurisdictions to consider implementing an easy-to-use process that would allow suppliers to verify the validity of their customers' VAT registration or tax identification numbers; or
- A certificate issued by the customer's competent tax authority, which indicates the business identity and registration of the customer; or
- Information available in commercial registers; or
- Commercial indicia that may provide a reliable indication of the status of the customer, individually or in combination with other indicia. These may include:
  - the nature and/or specific features of the supply, *e.g.* the supply of digitised music with no entitlement to the embedded intellectual property rights might indicate that the customer is not a business whereas the supply of software that is licensed for business use across a large number of networked computers would indicate that the customer is a business;
  - the value of the supply, *e.g.* the high value of a software package could indicate that the customer is a business;
  - The customer's trading history with the foreign supplier. This may include records from prior transactions which could provide information on the status of the customer;
  - Digital certificates or identity certificates (*i.e.* electronic credentials that are used to certify the online identity of their owner). These could serve to establish the status of the customer particularly when they include specific information about the customer's VAT registration or business tax status. The use of these certificates currently appears to be less widespread among private customers than among businesses.

82. In cases where a supplier, acting in good faith and having made reasonable efforts to obtain the appropriate evidence, is unable to establish the status of its customer, the Guidelines<sup>5</sup> provide that this could lead to a presumption that its customer is a non-business customer, in which case the rules for B2C supplies would apply. What may be considered as reasonable efforts will generally depend on the circumstances. For example in case the customer provided a VAT registration or identification number that was rejected or reported as invalid, the supplier may presume that its customer is a non-business and apply the rules for B2C supplies.

**E. Approaches for determining and evidencing the usual residence of the customer (where required)**

83. According to Guideline 3.1, internationally traded services and intangibles should be taxed for consumption tax purposes according to the rules of the jurisdiction of consumption. For B2B supplies, the jurisdiction that has the taxing rights over internationally traded services or intangibles is determined by reference to the location of the customer (Guidelines 3.2). This is the jurisdiction where the customer has located its permanent business presence. The Guidelines recommend two general rules for determining the place of taxation for B2C supplies of services and intangibles: for supplies that are physically performed at

<sup>5</sup> Guidelines, paragraph 3.8

a readily identifiable place and that are ordinarily consumed at the same time and place where they are physically performed in the presence of both the person performing the supply and the person consuming it (“on-the-spot supplies”), Guideline 3.5 recommends a place of taxation rule based on the place of performance. For all other B2C supplies Guideline 3.6 recommends a place of taxation rule based on the customer’s usual residence.

84. For B2B supplies, particularly those involving significant sums of money or complex matters beyond a straightforward supply, it is likely that the supplier will have sufficient information to determine the location of the business customer (written contracts, general correspondence, purchase orders, invoices, payment instruments, receipts...). Determining the usual residence of the customer in connection with B2C supplies may be more challenging. Particularly in the context of e-commerce, where activities frequently involve high volume, low-value supplies that rely on minimal interaction and communication between the supplier and its customer, it may be difficult to determine the customer’s place of usual residence from an agreement. The Guidelines<sup>6</sup> recommend that jurisdictions provide clear and realistic guidance for suppliers on what is required to determine the place of usual residence of their customers in a B2C context. This section of this report focuses on such guidance.

85. The Guidelines recommend that suppliers should be able to rely on information that is known or can reasonably be obtained by the supplier at the time when the tax treatment of the supply must be determined. This information is likely to depend on the business model, the type and value of the supplies and on the suppliers’ delivery model. Paragraphs 3.126 and 3.127 of the Guidelines (see the box below) provide the recommended key principles for jurisdictions’ rules and requirements for the determination and evidencing of the customer’s usual residence in B2C supplies of services and intangibles.

#### **The International VAT/GST Guidelines**

3.126 In the business-to-consumer context, jurisdictions are encouraged to permit suppliers to rely, as much as possible, on information they routinely collect from their customers in the course of their normal business activity, as long as such information provides reasonably reliable evidence of the place of usual residence of their customers. In addition, jurisdictions could consider adopting rules that, if they are satisfied that a business is following these principles, this business should expect challenges only where there is misuse or abuse of such evidence. Any guidance provided by the tax authorities will need to take account of the law and practice in the relevant jurisdictions, including with regard to the protection of personal privacy, while maintaining flexibility for businesses.

3.127 Generally, the information provided by the customer may be considered as important evidence relevant to the determination of the jurisdiction of the customer’s usual residence. This could include information collected within business processes (e.g. the ordering process), such as jurisdiction and address, bank details (notably country of the bank account), and credit card information. If needed, jurisdictions may require that the reliability of such information be further supported through appropriate indicia of residence. In some cases, such indicia might be the only indication of the jurisdiction of the customer’s usual residence. The available indicia will vary depending on the type of business or product involved, and might include the contact telephone number, the Internet Protocol address of the device used to download digital content or the customer’s trading history (which could, for example, include information on the predominant place of consumption, language of digital content supplied or billing address). These indicia are likely to evolve over time as technology and business practices develop.

<sup>6</sup> Guidelines, paragraphs 3.123 - 3.127

86. When designing and implementing their rules and requirements for determining and evidencing the customers' usual residence with respect to B2C supplies of services and intangibles as recommended by the Guidelines, tax authorities may wish to consider the following specific approaches:

- ***Requiring two non-contradictory pieces of information.*** Certain regimes require two non-contradictory pieces of information that suppliers routinely collect from their customers in the normal business activity to determine and evidence their customers' usual residence. In principle, this appears to have the potential to provide a high level of proof and certainty.
- ***Implementing a fall - back rule in cases where no or limited reliable information is available.*** The Guidelines encourage jurisdictions to permit suppliers to rely as much as possible on information they routinely collect from their customers in the normal course of their business activity, as long as such information provides reasonably reliable evidence of their customer's place of usual residence. The question that may arise is what happens if no or less reliable information is available to a specific supplier (or to a business sector more generally) for determining the customer's usual residence. Under such a scenario jurisdictions could consider allowing reliance on a tailored approach per supplier and/or sector of business activity that would offer a good approximation of the place of usual residence in an administrable manner. Such a tailored approach may notably allow reliance on only one available piece of evidence for determining the customer's place of usual residence. Such a tailored approach could be developed in consultation with the business sector in question and its key elements such as its scope and application in practice should be clearly published.
- ***Adopting safe harbour rules:*** The Guidelines recommend that jurisdictions consider implementing a safe harbour rule for suppliers acting in good faith and having made reasonable efforts in terms of determining the usual residence of the customer. What may be considered as reasonable efforts will depend on the circumstances. For example, under a safe harbour rule, the reliance in good faith on two non-conflicting pieces of evidence (wherever available) at the time of supply or the correct application of a fall-back rule (as described above) in good faith, might protect the supplier against challenges by the tax authorities, including where the determination of the usual residence of its customer turns out to be inaccurate.
- ***Moving from a transactions-based system for determining and validating the usual residence of the customer to a systems-based validation system.*** The use of business analytics may, over time, provide a more efficient solution for determining and evidencing customers' usual residence than the current practice of testing every individual transaction, including high-volume/low-value supplies. Business analytics could notably be used to read and validate the supplier's business information (e.g. Internet Protocol (IP) address, billing address, credit card) and to cross-match these data to establish the most reliable determination of customers' usual residence. Moving to a systems-based approach will normally require that tax authorities acquire a good understanding of the relevant suppliers' business model and their business and tax compliance systems, so that tax authorities can properly validate the reliability of suppliers' systems and assess the suppliers' compliance through systems-based audits.

## Chapter 3

### Design and practical operation of simplified registration and collection regimes

#### A. Introduction

87. The Guidelines recommend that, "When implementing a registration-based collection mechanism, [...] jurisdictions consider establishing a simplified registration and compliance regime to facilitate compliance for non-resident suppliers".<sup>1</sup> The highest feasible levels of compliance by foreign suppliers are likely to be achieved if compliance obligations in the jurisdiction of taxation are limited to what is strictly necessary for the effective collection of the tax while ensuring compliance burdens are proportional to the revenue collected. Appropriate simplification is particularly important to facilitate compliance for businesses faced with obligations in multiple jurisdictions. Where traditional registration and compliance procedures are complex, their application for foreign suppliers of B2C services and intangibles would risk creating barriers that may lead to non-compliance or to certain suppliers declining to serve customers in jurisdictions that impose such burdens.

88. This chapter provides further guidance and possible options for the design and operation of simplified registration and collection regimes, to support the policy analysis in the jurisdictions that may consider implementing such a regime or that may be reviewing their existing registration-based regime. It complements Chapter 2, which examines the following key aspects of the design and implementation of a registration-based VAT collection regime: (i) policy considerations informing the decision whether or not to implement a threshold below which foreign suppliers are relieved of the obligation to register, collect and remit the VAT in the taxing jurisdiction; (ii) the possible role of service providers in facilitating foreign suppliers to meet their VAT obligations; (iii) approaches for determining and evidencing the status of the customer (where required); and the customer's location (where required).

89. This report acknowledges that the design and implementation of a simplified registration and collection regime is likely to differ across jurisdictions, taking into account differences in policy and legislative environments, in administrative practice and culture, and tax authorities' distinct challenges and priorities. In addition, differences in business models and configurations are likely to affect businesses', or business sectors', capacity to comply with specific requirements. This chapter therefore is not intended to present or recommend a one-size-fits-all approach for designing and implementing a simplified regime, but to consider a range of possible options based on countries' experiences in designing and administering their existing regimes and on businesses' experiences in complying with these regimes.

90. The core objective of this chapter is to assist jurisdictions in designing, administering and evaluating their simplified registration and collection regimes with a view to achieving the greatest possible consistency among compliance processes across jurisdictions. Greater consistency among country approaches will further facilitate compliance, particularly by businesses that are faced with multi-jurisdictional obligations, reduce compliance costs and improve the effectiveness and quality of compliance processes. For tax authorities, consistency is also likely to support the effective international co-operation in tax administration and enforcement.<sup>2</sup>

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<sup>1</sup> Guidelines, paragraph 3.132

<sup>2</sup> Guidelines, paragraph 3.134

91. This chapter builds and elaborates on the general description of the possible main features of a simplified registration and collection regime set forth in Section C.3.3 of the Guidelines. It examines in further detail the possible options for the design, administration and practical operation of the following core elements of a simplified registration and collection regime:

- Possible scope of a simplified registration and collection regime.
- Registration.
- Input tax recovery – Refunds.
- Returns.
- Payments.
- Record keeping.
- Invoicing.
- Availability of information.
- Regularisation of suppliers that have failed to register.
- Lead time for implementation.

92. Experience shows that consultation with the business community is essential for the design and operation of an efficient and effective simplified registration and collection regime. Such consultations allow tax authorities to acquire a thorough understanding of the business sectors that are likely to be affected, their business models and the role of the various stakeholders in generating and making the supplies likely to fall within the scope of the prospective regime. Such consultation also allows tax authorities to consider the roles and responsibilities of each of these stakeholders in the collection and the remittance of VAT under the simplified regime, and to examine these stakeholders' capabilities in collecting and remitting the VAT and their limitations. These consultations also permit the affected businesses to gain a better understanding of how policy is developed and of tax authorities' policy objectives and constraints. This is likely to enhance businesses' understanding of the regimes and its objectives and to benefit the overall compliance level.

## **B. Scope of the simplified registration and collection regime**

93. The Guidelines recommend the simplified registration and collection regime as a solution for the effective collection of VAT on B2C supplies of services and intangibles by a supplier that is not located in the jurisdiction of taxation. This presumes, of course, that this jurisdiction has the taxing rights over these supplies in accordance with the Guidelines for determining the place of taxation (chapter 3 of the Guidelines) and that this jurisdiction decides to exercise these taxing rights. The Guidelines observe that the reverse charge mechanism, which is the recommended solution for B2B supplies of services and intangibles by foreign suppliers, does not offer an effective solution for collecting VAT on B2C supplies.

94. The Guidelines also recommend that such a simplified registration and collection regime operate separately from the traditional registration and collection regime, without the same rights (*e.g.* input tax recovery) and obligations (*e.g.* full reporting) as a traditional regime. Jurisdictions that decide to implement such a simplified regime that operates separately from the traditional regime will need to determine the scope of this simplified regime, *i.e.* it must determine the categories of supplies for which VAT will be remitted under the simplified regime as distinguished from the other categories for which the traditional regime would continue to apply.

95. This section examines this question in light of countries' analysis and experiences. Two approaches may be distinguished: a broad approach and a targeted approach.

**B.1 Broad approach: all B2C supplies of services and intangibles by foreign suppliers in scope**

96. The Guidelines do not limit the potential scope of the simplified registration and collection regime. Such a regime could be used to collect VAT on any type of B2C supply of services and intangibles by a foreign supplier, no matter on what basis (or "proxy") the taxing rights are allocated to the jurisdiction of taxation. The simplified registration and collection regime could thus be used to collect the VAT on any type of B2C supplies by suppliers that are not located in the taxing jurisdiction and for which this jurisdiction has acquired the taxing rights on the basis of any of the place of taxation rules recommended by the Guidelines *i.e.*:

- Guideline 3.5: for supplies that are subject to taxation in the jurisdiction where they are physically performed (*e.g.* sale of a theatre ticket by a supplier who is not located in the jurisdiction where the theatre performance takes place);
- Guideline 3.6: for supplies that are taxed in the jurisdiction where the customer has its usual residence (*e.g.* movie downloads);
- Guideline 3.7: for supplies that are subject to a "specific" rule for determining the place of taxation;
- Guideline 3.8: for supplies that are taxed in the jurisdiction where the immovable property is located (*e.g.* services directly connected with immovable property supplied by a foreign supplier).

97. The main common feature of the foregoing supplies is that the supplier is not located in the jurisdiction of taxation. The simplified registration and collection regime can provide an efficient and effective solution for collecting the VAT on B2C supplies of services and intangibles by such a foreign supplier. Facilitating compliance for these foreign suppliers is expected to stimulate compliance, thus securing VAT revenue and minimising competitive distortions between domestic and foreign suppliers.

98. An advantage of such a broad approach is that it reduces risks of uncertainty, complexity and possible disputes that might result from implementing different tax treatments for different categories or types of supplies. It reduces definitional questions (no need to define what is in and what is out of scope); it reduces the need to revise the rules whenever new types of supplies emerge and is therefore likely to be more future proof than a limited approach (which is typically relevant in the digital economy – see below under B.2.); and it is likely to ensure greater consistency in the tax treatment of similar types of supplies. Overall, a broad approach is therefore likely to reduce complexity and uncertainty for suppliers as well as for tax administrations.

99. On the other hand, tax authorities may wish to choose an approach whereby simplification measures are implemented only for those areas where there is a need for such measures. They may thus wish to avoid reforms, and changes for both suppliers and the tax administration, that may affect areas for which there is no compelling need for change. In the end, it is for the tax authorities to carefully balance both considerations: the potential advantage of implementing a broad approach in minimising uncertainty with regard to the scope of a simplified regime and minimising risks of uneven treatment between supplies that are in and out of scope; and the potential disadvantage of opening the simplification for supplies and/or suppliers where there is no need to deviate from the traditional registration and collection regime.

## ***B.2 Targeted approach: scope limited to specific type(s) of B2C supplies of services and intangibles***

100. A number of jurisdictions have chosen to limit the scope of their simplified registration and collection regime to what can broadly be described as digital B2C supplies by foreign businesses. These typically include the following categories of supplies: digital content purchases (downloads of e-books, videos, apps, games, music); subscription based supplies of content (news, music, streaming of video, online gaming); supplies of software services and maintenance (anti-virus software, digital data storage, etc.); licensing of content (*e.g.* access to specialised online content such as publications and journals, software, cloud based systems, etc.); and telecommunication and broadcasting services. Such an approach may be motivated by the objective to ensure the effective collection of VAT on B2C supplies in sectors where the risk of competitive distortion between domestic and foreign suppliers is considered most acute and/or where tax revenue is considered to be most at risk.<sup>3</sup>

101. A distinct tax treatment of supplies depending on their classification (*e.g.* digital supplies vs. non-digital) is likely to create classification challenges for both tax authorities and suppliers. This is particularly challenging in a digital environment, which is in constant evolution and is characterised by constant innovation leading to continuous changes in business and delivery models and the emergence of new business sectors and new types of services. In such an environment, it is often challenging for a non-expert to understand the key characteristics of a supply and to classify it for VAT purposes as being in or out of the intended scope of the simplified registration and collection regime (*e.g.* whether or not it is digital). It also requires tax authorities to constantly monitor the digital market evolutions, to ensure that the existing classifications remain updated. The failure to do so may result in revenue losses (as new types of supplies may not be captured) and competitive distortions. This may result in arbitrary distinctions in tax treatment between supplies that may in practice be similar or identical (*e.g.* whether or not a phone call is carried out over the internet; there may be instances where a supplier or the tax administration cannot even know by which means the call is carried out). These classification challenges are likely to become increasingly difficult for suppliers to manage, as more tax authorities implement simplified registration and collection regimes and different classifications and definitions are implemented across jurisdictions. This would most likely have a negative effect on compliance levels as a result of misclassification and growing complexity confronting suppliers with VAT obligations in multiple jurisdictions in a globalised digital economy.

102. A separate issue that may arise under a targeted approach is that a one-off supply that is not covered by the simplified registration and collection regime by a supplier that is registered under such a regime may result in an additional obligation for this supplier to register under the traditional regime. This could be addressed by offering the foreign supplier the flexibility to choose to declare such a supply under the simplified regime, under certain conditions (*e.g.* up to a certain amount). Such flexibility should be carefully considered so as to ensure a proper balance between simplification and the needs of tax administrations to safeguard the revenue through a manageable process.

## ***B.3 Overall considerations on the scope of a simplified registration and collection regime***

103. Determining the scope of a simplified registration and collection regime requires consideration of a wide range of factors including the existing domestic legal and economic context, the administrative and technical capacities and the constantly changing technological and commercial environment. Both a broad and a targeted approach merit consideration. It is anticipated, however, that a targeted approach may become increasingly difficult to operate over time as new technologies and business models continue to emerge and the types of services that can be supplied remotely to final consumers by foreign suppliers continue to grow.

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<sup>3</sup> See Chapter 9 of the OECD (2015) BEPS Action 1 Report for a more detailed discussion.

104. Whichever approach tax authorities may choose to implement, they are encouraged to give appropriate consideration to the following policy actions:

- To provide clear and easily accessible communication on the supplies that are covered by the regime, in order to maximise certainty for both suppliers and the tax administration;
- To regularly review the efficiency and the effectiveness of the regime, including assessing whether its scope remains fit for purpose. Against this backdrop, a jurisdiction may, for example opt for a targeted approach with a view to gradually extending the scope of the simplified registration and collection regime as this regime matures, in line with technological and commercial developments.

**C. Approaches to organising and simplifying registration and compliance under a simplified regime**

105. The Guidelines acknowledge that the simplest way to engage with tax administrations from a remote location is most likely through electronic processes,<sup>4</sup> *i.e.* registration and compliance processes could be delivered principally through electronic means with minimal requirements for physical movement of documentation. Such an approach can deliver considerable benefits both to tax administrations and to taxpayers. Many tax administrations have indeed taken steps to exploit the opportunities offered by technological innovation to develop a range of electronic processes to support the operation of their simplified registration and collection regimes, including the development of dedicated web portals. The Annex A to this report provides a high-level overview of key features of a simple and easy to use a web portal to facilitate the registration and compliance process.

106. It is recognised that tax administrations operate in varied environments and reliance on electronic processes may differ depending on the existing infrastructure or capacity. Against this background any reference to electronic processes in the following paragraphs is only intended to serve as a reference point to assist policy makers in their efforts to organise and simplify registration and compliance processes under a simplified regime, taking into account their specific circumstances and practices.

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<sup>4</sup> Guidelines, paragraph 3.139

## C.1 *Registration procedure*

### **The International VAT/GST Guidelines - Section C.3.3.1.**

3.138. Simple registration procedures can be an important incentive for non-resident suppliers to engage with the tax authority of a jurisdiction where they might have no link other than the supply of services or intangibles to final consumers. The information requested could be limited to necessary details, which could include:

- Name of business, including the trading name
- Name of contact person responsible for dealing with tax administrations
- Postal and/or registered address of the business and its contact person
- Telephone number of contact person
- Electronic address of contact person
- Websites URL of non-resident suppliers through which business is conducted in the taxing jurisdiction
- National tax identification number, if such a number is issued to the supplier in the supplier's jurisdiction to conduct business in that jurisdiction.

3.139. The simplest way to engage with tax administrations from a remote location is most likely by electronic processes. An online registration application could be made accessible on the home page of the tax administration's website, preferably available in the languages of the jurisdiction's major trading partners.

107. Tax authorities are advised that registration processes under a simplified registration and collection regime take due account of the existing law and practice in their jurisdiction, particularly in respect of the protection of personal privacy.

108. The following paragraphs examine a selection of practical considerations related to the organisation of such a simplified registration procedure.

#### *C.1.1 Online registration application*

109. The Guidelines<sup>5</sup> recommend that online registration be made available on the home page of the tax administration's website. This is preferably available in English as well as in the languages of the jurisdiction's major trading partners.

110. It is helpful to include click-through links in the online registration that provide access to additional clarification/information for the registrant to use when completing registration process.

111. The registration process can be facilitated further by providing the possibility for registrants to upload data and accompanying documents that may be required to substantiate the information, as well as the possibility to save a draft application and to complete it at a later stage. Tax authorities may also wish to provide the possibility for registrants to correct or update general information that may change over time (*e.g.* contact details etc.).

112. It is useful that the registrant be notified of its assigned registration number by electronic means (*e.g.* e-mail alert). There have been cases where the registrant is required to create a verification code at the

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<sup>5</sup> Guidelines, paragraph 3.139

registration stage, for security purposes, which subsequently must be used to retrieve its VAT registration number. It should be noted, however, that the requirement for such a specific individual password or encryption key may create complexity and security risks, in particular where the person who received such a password is not in a position to represent the supplier (*e.g.* because he/she has left the business) and must be replaced.

113. Jurisdictions that lack the administrative or technological capacity to implement and operate an online registration process, may alternatively consider implementing a registration process through e-mail exchange. For this, they could operate a dedicated e-mail address as a gateway for all communication with registrants (including registration applications and all related communication).

#### *C.1.2 The information requested for the registration.*

114. The Guidelines recommend that the information requested be limited to necessary details, such as:

- Name of business, including the trading name.
- Name of contact person responsible for dealing with tax administrations. It would be useful also to include the title of the authorised person (*i.e.* indirect tax manager), to ensure continuity in case of any subsequent changes at the business level.
- Postal and/or registered address of the business and its contact person. The requirement for a physical mailing address is useful even in cases where a fully electronic registration is available so as to ensure that if the electronic system breaks down the necessary information will be communicated in a timely manner to the correct contact.
- Telephone number of contact person.
- Electronic address of contact person.
- Websites URL of non-resident suppliers through which business is conducted in the taxing jurisdiction.
- National tax identification number, if such a number is issued to the supplier in the supplier's jurisdiction in order for it to conduct business in that jurisdiction.

115. The business documents required to substantiate the information provided (*e.g.* the name of business) may differ across jurisdictions. Tax authorities could therefore consider allowing the use of satisfactory alternative evidence when the requested substantiating document does not exist as such in the supplier's jurisdiction.

## C.2 *Input tax recovery - Refunds*

### **The International VAT/GST Guidelines – Section C.3.3.2**

3.140. It is reasonable for taxing jurisdictions to limit the scope of a simplified registration and compliance regime to the collection of VAT on business-to-consumer supplies of services and intangibles by non-resident suppliers without making the recovery of input tax available under the simplified regime. Where applicable, the input tax recovery could then remain available for non-resident suppliers under the normal VAT refund or registration and compliance procedure.

#### *C.2.1 Input tax recovery*

116. The Guidelines<sup>6</sup> recognise that it is reasonable for a jurisdiction to operate a simplified regime as a “pay-only” regime, *i.e.* limiting the scope of the regime only to the collection of VAT without making the recovery of input VAT available to the foreign supplier. Such an approach may ensure a proper balance between simplification and the needs of tax administrations to safeguard revenue.

117. Most foreign suppliers that register under a simplified registration and collection regime are unlikely to incur input VAT in the taxing jurisdiction, given that they are in principle not located there. However, the possibility that a foreign supplier registered under a simplified registration and collection regime incurs input VAT in the jurisdiction of taxation cannot be entirely excluded. This input-VAT should normally be recoverable for the foreign supplier if it is also deductible or recoverable for domestic suppliers, in accordance with the Guidelines on Neutrality included in chapter 2 of the Guidelines. How can such a recovery of input-VAT be achieved for a foreign supplier that is registered under a “pay-only regime” (*i.e.* a simplified registration and collection regime that does not provide a right to input-VAT deduction)?

118. Broadly two approaches for input-VAT recovery by foreign suppliers under a “pay-only” regime appear to be applied in practice:

- i. to provide input-VAT recovery through the regular registration procedure; or
- ii. to provide a refund through a separate refund procedure for foreign suppliers.

119. Under the first approach, the foreign supplier is given the opportunity to opt out of the simplified regime and to register and remit the VAT through the regular VAT compliance process for all its taxable supplies in the jurisdiction (including the supplies that would normally be covered by the simplified regime). This supplier then has the right to deduct the input VAT in the jurisdiction of taxation under normal rules. This option may be attractive for foreign suppliers that regularly incur input VAT in the taxing jurisdiction. This approach also reduces revenue risks, as input VAT is offset against the VAT payable in the jurisdiction of taxation in accordance with the normal staged VAT collection process.

120. Under the second approach, the taxing jurisdiction gives the foreign supplier access to a specific VAT refund procedure, which often (but not necessarily always) may already exist for foreign suppliers that are not registered under the simplified registration and collection regime. In case such a refund regime already exists for such foreign suppliers, it is recommended that foreign suppliers that are registered under the simplified regime be given access to the same regime. Creating separate regimes is likely to create complexity and increase compliance burden and administrative costs. There might also be a risk of

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<sup>6</sup> Guidelines, paragraph 3.140

duplication of refund claims if the separate refund systems do not communicate properly with each other. This approach is likely to provide a reasonable solution for foreign suppliers that do not regularly incur input VAT in the taxing jurisdiction.

### C.2.2 VAT adjustments and corrections – How to be made by the foreign supplier?

121. There may be instances where VAT has been overpaid or underpaid by the foreign supplier under the simplified registration and collection regime in the taxing jurisdiction. For example, this can be caused by the erroneous identification of the status or the location of the customer; or by the cancelation of the supply.

122. Under these circumstances the foreign supplier should be allowed to make the necessary adjustments and corrections, preferably in any later return (*i.e.* not necessarily in the return in which the mistake was made). It may be helpful to include a box in the VAT return where the foreign supplier can report the adjustments made in respect of prior returns, perhaps with a reference to the returns that have been corrected.

123. Tax authorities may also consider allowing any excess recoverable (*i.e.* overpaid) VAT resulting from adjustments or corrections be carried forward for a reasonable period. This would reduce the need for foreign suppliers to claim a refund of overpaid VAT.

### C.3 Return procedure

#### The International VAT/GST Guidelines - Section C.3.3.3

3.141 As requirements differ widely among jurisdictions, satisfying obligations to file tax returns in multiple jurisdictions is a complex process that often results in considerable compliance burdens for non-resident suppliers. Tax administrations could consider authorising non-resident businesses to file simplified returns, which would be less detailed than returns required for local businesses that are entitled to input tax credits. In establishing the requirements for information under such a simplified approach, it is desirable to strike a balance between the businesses' need for simplicity and the tax administrations' need to verify whether tax obligations have been correctly fulfilled. This information could be confined to:

- Supplier's registration identification number.
- Tax period.
- Currency and, where relevant, exchange rate used.
- Taxable amount at the standard rate.
- Taxable amount at reduced rate(s), if any.
- Total tax amount payable.

3.142 The option to file electronically in a simple and commonly used format will be essential to facilitating compliance. Many tax administrations have already introduced or are introducing options to submit tax returns electronically.

### C.3.1 *Simplified VAT return*

124. A simplified registration and collection regime for the collection of VAT on B2C supplies of services and intangibles by foreign suppliers without granting the right to input-VAT recovery (*i.e.* a “pay-only regime”), presents limited revenue risks for tax authorities. The suppliers registered under this regime will only remit VAT. They will not deduct any VAT. This justifies the requirement for these suppliers to submit a simplified VAT return that focuses only on the foreign supplier's obligation to remit the VAT on its supplies of services and intangibles that are subject to VAT in the taxing jurisdiction. The use of simplified VAT returns facilitates compliance and reduces the compliance costs and associated risks, particularly for foreign suppliers facing filing requirements in multiple jurisdictions.

125. In recognition of the necessity to balance tax administrations' needs for information to verify compliance by the foreign suppliers of B2C services and intangibles and suppliers' needs for simplicity, the information requested under the simplified VAT return could include the following elements:

- The supplier's registration number.
- The tax period.
- The currency and, where relevant, the exchange rate used.
- The taxable amount at the standard rate.
- The taxable amount at reduced rate(s), if any.
- The total tax amount payable.

### C.3.2 *Format of the simplified VAT return - Electronic return*

126. It is recommended that foreign suppliers under a simplified registration and collection regime be given the opportunity to file their VAT return electronically in a simple, easy-to-generate and commonly used format. XML is one of the most commonly used data upload tools employed for data entry, as it is both machine and human readable and it is supported by open standards. However, a range of alternative technical solutions is available, and this report does not intend to recommend or to be seen as endorsing any particular technology, acknowledging that different businesses types or sectors may prefer different options for filing reports.

127. Additional potential options to facilitate compliance through electronic filing under a simplified registration and collection regime include the following:

- Allowing the uploading of VAT return data via electronic file transfer through the tax authority's web portal (if available);
- Providing an option for uploading the return data in a summary form, without requiring line-by-line entry;
- Providing a means for saving data to ensure that data can be entered at different times.

### C.3.3 *Frequency of filing*

128. An obligation to file returns quarterly is likely to keep compliance and administrative burdens from the filing and processing of these VAT returns at an appropriate level for both suppliers and tax administrations. Indeed, over time, tax administrations may well be faced with increasingly large numbers of VAT returns, as cross-border trade in B2C services and intangibles is expected to keep growing along

with the expected growth in internet trade. A quarterly filing requirement is also likely to allow the appropriate time for suppliers to process the necessary data.

129. Tax authorities may consider releasing foreign suppliers from the obligation to submit a return under the simplified regime if the total VAT payable remains below an amount to be determined by the tax administration, and to allow these suppliers to report this amount of VAT payable in a future filing period. Tax authorities may also consider allowing foreign suppliers to submit a simple notification of a nil report for a taxable period during which no VAT is payable and not requiring the filing of a VAT return as such.

#### **C.4 Payments**

##### **The International VAT/GST Guidelines - Section C.3.3.4**

3.143. The use of electronic payment methods is recommended, allowing non-resident suppliers to remit the tax due electronically. This not only reduces the burden and the cost of the payment process for the supplier, but it also reduces payment processing costs for tax administrations. Jurisdictions could consider accepting payments in the currencies of their main trading partners.

##### *C.4.1 Payments methods*

130. The use of electronic payment methods is recommended as a means to facilitate the payment process and reduce associated costs and risks for both the foreign supplier and tax administrations. Against this background, tax authorities are encouraged to consider the following measures to further facilitate the payment of the VAT under a simplified compliance and registration regime:

- Providing clear guidance on the accepted means of payments;
- Ensuring that foreign suppliers have the possibility to choose the least costly accepted payment solutions, provided that they are adequately secure;
- Exempting foreign suppliers from the requirement of maintaining a local bank account in the taxing jurisdiction, particularly if the opening of such a local bank account requires the presence of an establishment of the foreign supplier in the taxing jurisdiction (which a foreign supplier will typically not have);
- Accepting payments in the currencies of the taxing jurisdiction's main trading partners;
- Ensuring that the appropriate safeguards are in place to mitigate risks from potential attacks on electronic payment channels.

##### *C.4.2 Rounding*

131. Rounding rules are typically set within suppliers' accounting and business systems and they will therefore often vary depending on the suppliers' system set-up and architecture. The implications of various rounding methods on pricing and whether rounding should apply per transaction, invoice or return is a complicated and technical issue that lies outside the scope of this report. However, tax authorities are encouraged to allow the application of reasonable and coherent methods of rounding, in line with what suppliers use for accounting purposes.

##### *C.4.3 Foreign exchange rates*

132. Foreign suppliers often charge their customers in a currency (*i.e.* the transaction currency) that is different from the taxing jurisdiction's currency. However, they must submit their VAT returns and make VAT payments in the taxing jurisdiction's currency (*i.e.* the reporting currency). They will therefore need

to convert the transaction currency to the reporting currency if these currencies are different. The question will then arise which exchange rate must be used for this conversion.

133. Tax authorities typically refer to the official published rates for the conversion to the reporting currency. In addition, tax authorities could also allow suppliers to use reasonable and coherent internal business rates which are based on averages over time of the official rates (with built-in tolerance for small differences).

134. Jurisdictions that are in a position to support the use of Application Programming Interfaces (APIs),<sup>7</sup> could make the exchange rate to be used by foreign suppliers for filing and payment purposes available via an API.

### **C.5 Record keeping**

#### **The International VAT/GST Guidelines - Section C.3.3.5**

3.144 Tax administrations must be able to review data to ensure that the tax has been charged and accounted for correctly. Jurisdictions are encouraged to allow the use of electronic record keeping systems, as business processes have become increasingly automated and paper documents generally have been replaced by documents in an electronic format. Jurisdictions could consider limiting the data to be recorded to what is required to satisfy themselves that the tax for each supply has been charged and accounted for correctly and relying as much as possible on information that is available to suppliers in the course of their normal business activity. This could include the type of supply, the date of the supply, the VAT payable and the information used to determine the place where the customer has its usual residence. Taxing jurisdictions could require these records to be made available on request within a reasonable delay.

#### *C.5.1 Data to be recorded*

135. Record keeping requirements are a key element in the design of a simplified registration and collection regime. It is reasonable for tax authorities to require foreign suppliers to keep reliable and verifiable records that can be trusted to contain a full and accurate representation of their supplies performed in the taxing jurisdiction. Jurisdictions are encouraged to allow the use of electronic record keeping systems, as business processes have become increasingly automated and paper documents generally have been replaced by documents in an electronic format.

136. Jurisdictions are encouraged to limit the data to be recorded to what is necessary to satisfy themselves that the tax for each supply has been charged and accounted for correctly and to rely as much as possible on information that is available to suppliers in the normal course of their business activity. Jurisdictions are encouraged to allow foreign suppliers to use, to the widest possible extent, existing reliable business records and accounting systems to fulfil their record keeping obligations under the simplified registration and collection regime. Such an approach is likely to facilitate and stimulate compliance and to increase certainty for both suppliers and tax administrations. The information to be recorded could be limited to:

- the type of supply
- the date of the supply

<sup>7</sup> Application Programming Interfaces (APIs) are open sets of standards that describe how information can be exchanged between the applications and services. APIs enable the direct and automatic transfer of data from supplier's accounting and record keeping software to the reporting system and therefore minimising the need to enter manually the information required.

- the VAT payable, and
- the information used to determine the place where the customer has its usual residence.

### C.5.2 *Storage of records*

137. The storage of records should facilitate the timely access to the foreign supplier's relevant records in a readable format for the tax administration in the taxing jurisdictions, in order to allow the tax administration to verify the supplier's compliance under the simplified registration and collection regime in an efficient and expeditious manner.

138. Tax authorities may consider a requirement for foreign suppliers to make the records electronically available to the tax authorities on request within a reasonable timeframe and a readable format.

139. In addition, allowing remote storage, *i.e.* outside the taxing jurisdiction, in an electronic format and in conformity with the relevant privacy protection rules may provide significant benefits for both tax administrations and taxpayers. This could, under appropriate circumstances, allow suppliers to keep centralised records for all the jurisdictions in which they have VAT liabilities under these jurisdictions' registration and collection regimes and provide these jurisdictions access to these records as and when required. This would considerably reduce the associated compliance costs for suppliers and is likely to benefit the quality of the records, as suppliers then have to maintain only one record keeping system instead of a variety of records that may differ from jurisdiction to jurisdiction while addressing potential issues with conflicting national data privacy laws.

140. Tax authorities may consider the following measures and aspects when designing the record retention requirements for foreign suppliers under a simplified registration and collection regime:

- Ensuring that the usability and readability of data be preserved throughout the required retention period. If suppliers have encrypted the data, they should maintain the necessary key-recovery procedures to ensure that decrypted data can be made available to the tax administration in a readable format;
- Adopting a reasonably short and proportionate period for the required duration of the storage in order to keep the associated costs at a reasonable level. A retention period from 5 to maximum 10 years is generally considered a reasonably short and proportionate storage duration period (recognising however that tax authorities may wish to opt for a shorter retention period, for example, in line with pre-existing rules);
- Suppliers must be expected to have appropriate safeguards in place to ensure the secure storage of their records regardless of whether the records are stored electronically or otherwise. However, jurisdictions may consider not requiring sensitive information to be stored for a long period as this is likely to put the sensitive information at risk (*e.g.* hacking to acquire payments details; identity theft etc.).

## C.6 Invoicing

### The International VAT/GST Guidelines - Section C.3.3.6

3.145 Invoicing requirements for VAT purposes are among the most burdensome responsibilities of VAT systems. Jurisdictions could therefore consider eliminating invoice requirements for business-to-consumer supplies that are covered by the simplified registration and compliance regime, in light of the fact that the customers involved generally will not be entitled to deduct the input VAT paid on these supplies.

3.146 If invoices are required, jurisdictions could consider allowing invoices to be issued in accordance with the rules of the supplier's jurisdiction or accepting commercial documentation that is issued for purposes other than VAT (*e.g.* electronic receipts). It is recommended that information on the invoice remain limited to the data required to administer the VAT regime (such as the identification of the customer, type and date of the supply(ies), the taxable amount and VAT amount per VAT rate and the total taxable amount). Jurisdictions could consider allowing this invoice to be submitted in the languages of their main trading partners.

141. The Guidelines recommend eliminating tax invoice requirements for B2C supplies under a simplified registration and collection regime on the ground that the customers, who are final consumers, are generally not entitled to deduct the VAT paid to the foreign suppliers.

142. Where invoices would nevertheless be required, *e.g.* in line with existing trade practice or under consumer protection rules, jurisdictions are encouraged to limit the data on the invoice to what is strictly required to ensure the verification of the suppliers' compliance under the simplified registration and collection regime. Those data may include:

- the identification of the customer
- the type and date of the supply(ies)
- the taxable amount and VAT amount per VAT rate
- and the total taxable amount.

143. Invoices including the above limited data could be allowed in an electronic format.

144. To further reduce the compliance burden and administration costs that are inevitably associated with invoicing requirements, tax authorities may consider the following measures:

- accept invoices issued in accordance with the rules of the supplier's jurisdiction
- accept commercial documentation that is issued for purposes other than VAT (*e.g.* electronic receipts)
- accept invoices in the language of the taxing jurisdiction's main trading partners
- allow the delivery requirements for an invoice to be kept as simple as possible, *e.g.* by allowing self-printing by the customer.

## C.7 *Communication strategy - Availability of information*

### **The International VAT/GST Guidelines - Section C.3.3.7**

3.147 Jurisdictions are encouraged to make available on line all information necessary to register and comply with the simplified registration and compliance regime, preferably in the languages of their major trading partners. Jurisdictions are also encouraged to make accessible via the Internet the relevant and up-to-date information that non-resident businesses are likely to need in making their tax determinations. In particular, this would include information on tax rates and product classification.

145. A proper communication strategy is crucial to achieving appropriate compliance levels by foreign suppliers of B2C services and intangibles in the taxing jurisdiction. This includes publicising all the necessary information to register under and comply with the simplified regime, on line in clear wording and in an easily accessible format, well in advance of the implementation of this regime and kept up-to-date after its implementation (*e.g.* with frequently updated Questions and Answers). Box 4 below provides an overview of information elements for tax authorities to consider when designing and implementing their communication strategy. It is recommended that this information is made available in English and/or in the language(s) of the taxing jurisdiction's major trading partners.

146. Experience shows that the ability to access this information from one place (*e.g.* through a dedicated web portal instead of a number of different sites) increases the efficacy of the communication but also facilitates the updating by the tax authorities.

147. Tax authorities that may lack the technological capacity to provide online information are encouraged to compile the relevant information in one file that can be sent out electronically to interested parties (*e.g.* via an e-mail) or that could be made available in a paper format (by way of last resort).

148. As part of their communication and information strategy, tax authorities may consider appointing specific contact points within the tax administration that can respond to taxpayers' enquiries on the operation of the regime and provide relevant information.

<b>Box 4 Information to be made available to support compliance by foreign suppliers under simplified registration and collection regimes</b>		
<b>Critical information</b>	<b>Highly useful information</b>	<b>Useful information</b>
<i>Registration - Rates - Exemptions - Special rules</i>		
<ul style="list-style-type: none"> <li>• VAT registration thresholds.</li> <li>• Registration process and time limits.</li> <li>• Registration number format.</li> <li>• Exemption from registration.</li> <li>• Possible voluntary registration.</li> <li>• Use of agents/fiscal representatives.</li> <li>• Impact of registration for business-to-consumer supplies on the treatment of business-to-business supplies.</li> <li>• Applicable rates and exemptions.</li> </ul>	<ul style="list-style-type: none"> <li>• VAT grouping rules.</li> <li>• Penalties for late registration.</li> <li>• Interaction with and impact on other taxes, <i>e.g.</i> withholding taxes, stamp duties etc.</li> </ul>	
<i>Reporting - Record keeping - Audit</i>		
<ul style="list-style-type: none"> <li>• VAT accounting requirements.</li> <li>• Invoicing and record keeping requirements, including simplified invoices and credit notes.</li> <li>• Price display conventions or requirements (tax driven or not).</li> <li>• Record keeping requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Any other documentary requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Audit and inspection procedures.</li> </ul>
<i>VAT return</i>		
<ul style="list-style-type: none"> <li>• VAT reporting requirements - Format of return</li> <li>• Where and how to effect payment – <i>e.g.</i> local bank account required.</li> <li>• Filing periods and due dates for filing and payment</li> <li>• Exchange rates.</li> <li>• Treatment of input VAT.</li> <li>• Process for correction of errors.</li> </ul>	<ul style="list-style-type: none"> <li>• Guidance on appeals and disputes, including procedural matters, such as time limits.</li> <li>• Penalties for late/missing/inaccurate returns.</li> </ul>	<ul style="list-style-type: none"> <li>• Possibility to agree different filing periods.</li> <li>• Input VAT adjustments.</li> <li>• Bad debt relief.</li> </ul>
<i>Deregistration</i>		
Full details of de-registration requirements/process		

### **C.8 Regularisation of suppliers that failed to register**

149. A question that may arise is how can a foreign supplier who has not registered in a timely manner regularise its position and become compliant?

150. Tax authorities could consider facilitating the regularisation of suppliers that failed to register by allowing them to report/file transactions for (a) previous period(s) in any current taxing period. They may, however, wish to consider allowing such regularisation on a case-by-case basis so as to minimise risks of abusive use of these provisions.

151. Regularisation could be further encouraged through voluntary compliance schemes that strike a balance between providing sufficient incentives for those engaged in non-compliance to come forward and not rewarding or encouraging such conduct.<sup>35</sup>

### **C.9 Provide adequate lead time**

152. Experience shows that the provision of adequate lead time (*i.e.* the time between the announcement and the implementation of the simplified regime) provides benefits both for tax administrations and taxpayers in terms of promoting a good understanding of the regime while allowing a smooth and proper operational process change. A minimum of six months lead time is considered to be a reasonable period.

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<sup>35</sup> See [www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf)



## Annex A - Typical characteristics of a well-designed online portal

### Box 5 Typical characteristics of a well-designed online portal to facilitate registration and compliance

- **Simple and secure access to the registration portal**
  - Log on to the government's online service
  - Insert basic identification information (e.g. name, address, website URLs, contact persons)
  - Create a verification code or establish a credential to get access to the portal
- **Simple operating instructions and navigation incl.**
  - Compatibility with the most commonly used business systems;
  - Capacity to upload data rather than having to fill in tables on line;
  - Availability of a structured template (e.g. XML, Excel) that can be filled in off-line;
  - Automated controls for submission/lodgement (e.g. validating totals);
  - Ease of making corrections or changes at any time during or after the registration;
  - Frequently updated Questions and Answers;
  - Supporting the operation of the portal through a back office support team
  - Sending out of automatic notifications/alerts to taxpayers when there is communication uploaded on the portal.
- **Operation at least in English and/or the language(s) of the major trading partners**
  - The language(s) used to be kept simple and clear to avoid any confusion;
- **Secure to use**
  - Different levels of credentials may dictate the level of self-service that can be offered;
  - Better to avoid requiring encryption keys or specific individual passwords as this could create complexity and potential risks in cases where authorised persons are unable to perform their duties and need to be replaced;
  - Secured communication of pass codes (e.g. pass codes via the post can easily get lost)
- **Include easily accessible information (see also Section C.7)**
  - Facilitate access to the information e.g. through information bubbles on forms; links to the relevant guidance with the information sought; have a point of contact for questions/queries etc.
  - No need for a domestic VAT number for getting access to the information (this may not be available at the point the information is required)

For more information:  
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[www.oecd.org/tax/consumption](http://www.oecd.org/tax/consumption)  
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