How successful is e-commerce?

As ongoing consultations on the e-Commerce Package are concluded, *Alex Smith* asks whether there is room for improvement.

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The European Commission (EC) is likely to hail the introduction of the EU e-Commerce Package as a success in reducing the cost of compliance for cross border trade – and for good reason. Before this scheme was introduced, in certain circumstances businesses were required to register and report VAT in every European country that they sold goods to if they exceeded distance selling thresholds. If eligible, this is no longer the case for businesses. Registering through One Stop Shop (OSS) schemes enables businesses to greatly reduce the time spent maintaining compliance across EU member states.

However, while businesses have steadily registered for the OSS schemes intended to create a level playing field for businesses both within and outside of the EU, the EC has not met all of the goals that it set out to achieve with the e-Commerce Package.

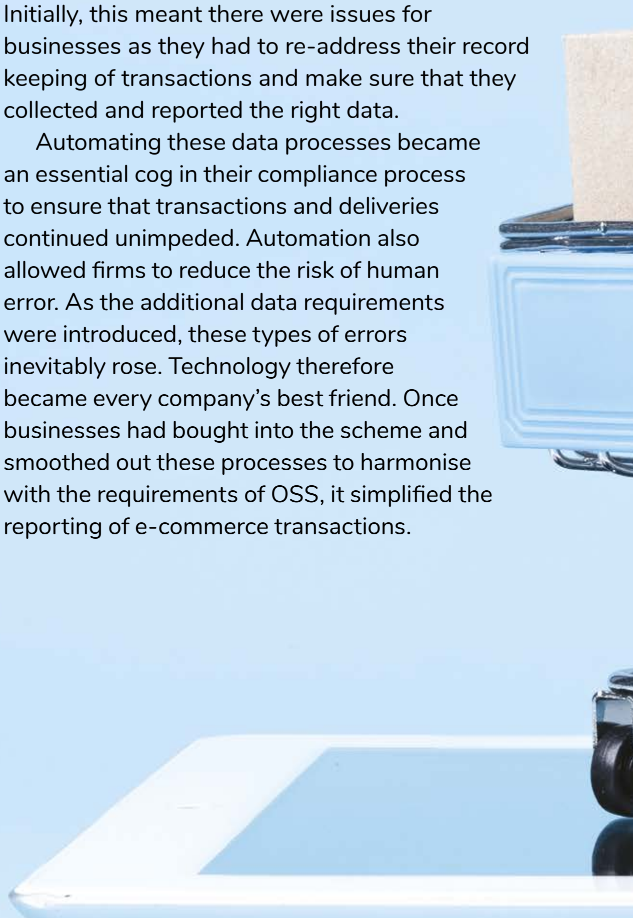
Since the introduction of the e-Commerce Package, the EC has been conducting ongoing consultations with businesses and tax authorities to address the teething issues that both parties experienced during the first year of the OSS schemes. These initial issues have included the convenience of the schemes, frustration with the threshold for low-value goods, and ongoing fraud with the supply chain – highlighting that more works needs to be done to ensure that businesses continue to use these schemes.

The consultations ended on 15 April, so we can expect some changes to come over the summer months as we reach the one-year mark from the introduction of the EU e-Commerce Package. The nature of compliance for doing business within the EU and importing goods from abroad will continue to evolve, so business leaders will be tasked with staying up to date with these schemes and the potential changes ahead.

The benefits imported by the EU e-Commerce Package

The introduction of OSS last July required a much greater detail of data to be reported. The trade-off was that the scheme unified the reporting mechanism for businesses selling via online marketplaces and their websites, which would only have to be completed via one tax authority. Initially, this meant there were issues for businesses as they had to re-address their record keeping of transactions and make sure that they collected and reported the right data.

Automating these data processes became an essential cog in their compliance process to ensure that transactions and deliveries continued unimpeded. Automation also allowed firms to reduce the risk of human error. As the additional data requirements were introduced, these types of errors inevitably rose. Technology therefore became every company's best friend. Once businesses had bought into the scheme and smoothed out these processes to harmonise with the requirements of OSS, it simplified the reporting of e-commerce transactions.



Fortunately, businesses have been allowed to correct previous OSS returns in their next OSS return. So, while the requirements are increasing the level of data reporting that companies need to meet, the EC has been particularly helpful to reporting errors.

At the same time, the greater data requirements for OSS mean that tax authorities have a lot more information readily available to conduct audits and determine penalties without the need for lengthy on-site visits. This will ensure a much more efficient compliance process for regulators in the future.

For intra-EU trade, e-commerce businesses selling goods previously had to comply with Intrastat obligations when they exceeded the reporting thresholds. For lots of businesses, an obligation arose when goods were dispatched from one member state and delivered to various other EU countries, so thresholds were often exceeded which complicated compliance. However, under Union OSS, there is no mention of Intrastat, so there is no guidance for how this would be applied to businesses that have adopted the policy, which has created ambiguity.

While all of this improves compliance across the EU, ongoing consultations have allowed businesses to have an open dialogue about their experiences using the e-Commerce Package. Now that the consultations have been finalised, we can expect some of the initial issues to be ironed out – so what work needs to be done?

Room for improvement

There was some initial frustration from businesses importing into the EU with the €150 threshold for low-value goods through the Import One Stop Shop (IOSS) scheme. This affected non-EU businesses that were exporting goods to customers within EU member states and were fulfilling orders of multiple low-value goods. These orders would often accumulate to exceed the €150 threshold, meaning many e-commerce sellers weren't able to use the IOSS scheme.

This has been an ongoing issue that we can expect the EC to address following the consultations that finished in April. What's unclear is where the EC will set the bar for low-value goods, particularly in light of the customs duty threshold being €150 – how will this work if VAT thresholds changed? It's in the EC's interest to make IOSS more appealing to businesses so that they can collect larger data sets to determine the health of the economy. But, in order to do this, the threshold will have to be raised to offer businesses convenience when it comes to compliance.

What's more, IOSS was not made compulsory for non-EU sellers. Due to the issues with the €150 threshold, some sellers would either not register and make the customer the importer or would use 'special arrangements' via their shippers. Where the customer was the importer of record, this has heavily impacted the customer experience, as they became the liable party to pay import VAT before the goods could be released and delivered to them. We have seen numerous examples of tax authorities challenging this position.

Many EU member states are looking to reduce their VAT gap through tax digitisation, which will help them to streamline.

For non-EU businesses, they may still have to apply for all three OSS schemes. For example, if products and services were being sold, with goods based in the UK and the EU, the business would need to register and report under all three schemes. Double taxation has also caused confusion and reluctance to join the scheme, particularly for goods over the €150 threshold as IOSS does not apply. If goods are imported into one member state but delivered to another, this can result in double taxation with import VAT due in the member state of import and local VAT due in the member state of destination.

IOSS and OSS were ultimately introduced to improve the efficiency and simplicity of VAT compliance for businesses, but there are still a number of factors that remain complicated and deter businesses from registering for the scheme. But that's not the only problem. Supply chain fraud is yet another issue facing the future success of the EU e-Commerce Package.

Addressing fraud in the supply chain

Fraud is a major issue that has had a significant impact on many countries' economic health and IOSS has proven to be extremely simple to exploit, meaning that many companies have avoided paying tax dues. For example, in December last year the EC reported that EU member states missed out on €134 billion in VAT revenues in 2019 because of VAT fraud and evasion. While we expected the VAT gap to have declined over the past two years, IOSS has not made VAT avoidance on imported goods any harder and needs to be addressed to further reduce the VAT gap.

When businesses register to IOSS, they are given a unique registration number. This makes it easy to determine which business is accountable for paying the VAT due whenever goods are imported into the EU. However, because these registration numbers are printed on every package, the system is very easy to exploit. Even the large marketplaces, such as Amazon and eBay, have their own unique IOSS number.

By doing this, fraudsters are able to ship goods into the EU without having to pay VAT, and businesses then have to contest the VAT that they owe. While the increased amount of data collected on transactions makes it easier for sellers to prove whether or not the shipment of goods originated from them, the simplicity of fraudulently importing goods under a seller's registration means that goods are able to be shipped and delivered and tax authorities will not be able to determine the right party to pay to the VAT dues. Ultimately, the EU will miss out on vital VAT revenue.

As EU member economies emerge into a post-pandemic world, they'll be keen to reduce their VAT gap and collect the VAT that is owed to them. However, the issue of VAT fraud for imported goods is working against them in achieving this. As we approach a year on from the introduction of OSS, this is just one of a number of issues that need to be addressed to encourage more businesses to use these schemes.

What changes we can expect

As with every new tax legislation introduced, it takes time to smooth out the rough patches and make changes to ensure that it is fit for long term use. Many EU member states are looking to reduce their VAT gap through tax digitisation, which will help to streamline and accurately determine taxes due to them. OSS schemes will be no different and EU member states will want them to work as efficiently and accurately as possible.

On the public sector side, reducing fraud in the supply chain will be a top priority. Technology will be the key to allowing tax authorities to determine that goods are being imported with the correct registration number. These systems will need to efficiently identify orders against a business's transaction history. While this may require additional data reporting on top of the increased OSS requirements, it will also benefit the customer experience because it will dramatically reduce the time it takes for goods to clear customs.

Increasing the low-value goods threshold is another issue that will likely be adjusted in the not too distant future. It's likely that the level this threshold is adjusted to will rely on what will happen to the current customs duty on imported goods. Can the threshold be increased so the EU can encourage more businesses to use IOSS and what impact would this have on customs duty revenue? Meanwhile, businesses will want the increase because it offers them greater convenience and will reduce the time for goods to reach the customer following customs.

In general, Union OSS has been welcomed. Ultimately, the EU e-Commerce Package has helped to increase the simplicity of VAT compliance for businesses operating within, and importing to customers who reside in, the EU. Over the summer, we can expect to see some changes take place that address the current issues and ultimately encourage more widespread use of the schemes.

Author bio
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