Business at OECD submission to the public consultation in Norway on the proposed new VAT rules on low value goods

Norwegian Ministry of Finance and Norwegian Tax Administration, sent to the attention of:

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BUSINESS AT OECD **FEEDBACK ON PROPOSED NORWEGIAN LOW VALUE GOODS VAT RULES**

Dear Sirs,

Thank you very much for reaching out to *Business at OECD* and the wider business community to receive business input into the public consultation launched on the planned new low value goods rules in Norway.

Business at OECD, established in 1962, is an international business network with a global membership representing over 7 million companies of all sizes. It is a cross-industry diverse group and stands for policies that enable business to contribute to growth, economic development, and prosperity, and is a trusted partner to the OECD and other national and international institutions.

We very much appreciate being able to support your work by providing you with practical business experience gained on this topic from operating in a global market, with over 160 VAT/GST systems globally. We are pleased to share with you what we have learned in practice both in terms of challenges as well as good practices, particularly in jurisdictions that have already enacted new rules on low value goods, such as Australia and New Zealand, but also the EU where the rules on low value goods will kick in from 2021 onwards. We have been actively involved as *Business at OECD* in the OECD VAT/GST work from the initial development of the OECD VAT/GST Guidelines, to the report on effective VAT/GST collection mechanisms up to the recently published OECD digital platforms report, and have always actively supported this work from a business perspective with commercial and business practical input through the well-established OECD VAT/GST Technical Advisory Group (TAG) process.

As already mentioned in previous discussions, and also highlighted in various occasions in our OECD work and at the OECD Global Forum on VAT, for us in business, Norway has always been referred to as a best practice when it comes to the electronic services rules and the online portal (the VOES-system). We very much hope, and it is our true aim to also make Norway a best practice for low value goods. This should definitely be the ambition of us all, despite the very big challenge for us in business but also for the Norwegian Ministry of Finance and the Norwegian Tax administration, given the extremely short time line with almost no lead time for all of us.

As highlighted in our meeting in Oslo, we are very happy and keen to actively and constructively support you on this journey from a VAT technical and business practical perspective (sharing our experience made on this topic from all around the world). At the same time importantly we stress that on the political side the timeline is quite challenging for all of us. We are committed to working in an open and constructive partnership together, trying our best to make things work for 2020.

We very much look forward to building on our very constructive dialogue that we started with our meeting in Oslo in May, and that we will continue during the public consultation process and beyond, exchanging thoughts and practical business experience. Therefore, thank you very much once again for being able to provide our business input on this topic.

In our submission, we focus on 4 key aspects,

- Overarching principles
- Consultation with business & appropriate lead time
- Broad scope – requires safeguards for marketplaces
- Making guidance / Information available & Communication strategy

Additional details and specific points will be raised by our business members directly in their own individual company submissions.

1. Overarching principles

Whenever new VAT regulations are developed, *Business at OECD* highlights the importance of the below mentioned principles:

- *Certainty & Simplicity*
- *Consistency*
- *Proportionality*
- *Fiscal & Channel Neutrality*
- *International Cooperation / Enforcement*
- *Ability to automate (millions of transactions and hundreds of thousands of business parties involved)*
- *Consultation with business & appropriate lead time*

These principles are particularly important when it comes to modern (e-)commerce, which is truly global in nature with suppliers and customers (both business and final consumers) located all over the world, far from each other in distance but still through modern technology only one click away. We very much hope and believe that the new Norwegian provisions on low value goods will be spot on when it comes to the above mentioned principles.

2. Consultation with business & appropriate lead time

The first step always is to come up with new regulations that are sound and fulfill their objectives but at the same time are clear and easily implemented by business and tax authorities in practice. Therefore consultation with business from thought to implementation of the new rules is highly important and highly appreciated from the business side – so thank you again for consulting us.

Moreover, in addition to consultation with business, granting business the appropriate lead time to implement the new rules is of extraordinary importance. This is particularly relevant in modern (e-) commerce, which is a unique ecosystem, truly global, with a variety of parties involved – suppliers, customers, marketplaces, freight forwarders, payment providers - big and small, local and foreign, acting in different capacities (business and final consumers) and impacting on VAT and customs rules. All of this illustrates the complexity, which we all need to deal with both as businesses (as VAT collectors) but also tax administrations in order to make things work in practice for both sides. As already highlighted, we are therefore very concerned by the tight timeline (January 1, 2020), which we understand is politically driven, and which we know poses a very big challenge for both businesses that are impacted by the changes but also for you on the government side who have to come up with the new law in a very short period of time, making sure that both business and tax authorities can apply the new law from day 1.

When looking at other jurisdictions in the world that have already enacted similar types of rules like Australia, New Zealand or also the EU (which is still in the process to implement the new rules), to implement these rules in practice so that both tax authorities and business can apply them takes time – well spent time.

Taking Australia as an example, the rules were effective from July 1, 2018, the Australian Tax Office (ATO) approached *Business at OECD* in autumn 2016 to help facilitating their public consultation, which we happily supported them with, and which ran from November 4, 2016 to December 2, 2016 with the aim for the new rules to become effective from July 1, 2017. The time line was then reconsidered on a political level and the start date was delayed until July 1, 2018. From public consultation to when the new rules became effective in Australia was a time span of 18 months.

Looking at New Zealand, the new rules will be effective from December 1, 2019, Inland Revenue in New Zealand contacted *Business at OECD* in June 2018 and asked for support on their plans of a public consultation, which occurred in June/July 2018 and which we as *Business at OECD* actively supported. At the end of November 2018, the draft law was published announcing that the new rules were planned to become effective from October 1, 2019.

Having recognized the impact on business through various business submissions received, the New Zealand Government announced on June 17, 2019 that the start date of the new rules will be delayed from October 1 to December 1, 2019. The law was finally adopted by New Zealand Parliament on June 27th, 2019, so 5 months before the new rules become effective. In New Zealand the time span from public consultation to when the new rules became effective was 16 months.

The new rules in the EU on low value goods were adopted by the EU Council in December 2017 with an implementation date into the national laws by the 28 Member States, of January 1, 2021. What initially seems to have been a generous timeframe for implementation turns out now to become a challenge given the complexity of the topic and the variety of aspects in VAT and customs that have to be considered and implemented in practice. Clearly, the EU has its own complexities when it comes to implementation of EU regulations into the 28 Member States, but still, as the 3 year time span to implement the new rules and the experience we gained in this process so far shows, it is not an easy process and therefore well spent time to ensure that the new rules are implemented properly and thoroughly in practice for the benefit of both business and tax authorities.

The public consultation document on the planned new rules on low value goods in Norway also refers to Australia and New Zealand and the new low value goods rules there. In contrast to Norway where the registration threshold is foreseen to be NOK 50,000 (approximately Euro 5,000), the registration threshold in Australia is AUD 75,000 (approximately Euro 46,000), and in New Zealand NZD 60,000 (approximately 35,000 Euro), each much higher than in Norway. From our perspective this also needs to be taken into consideration when considering the lead time, since there are many more foreign suppliers impacted by the new rules in Norway, showcasing another very significant argument why an appropriate lead time is very important to be considered for Norway.

Finally, we would also like to refer to the recently published OECD report on "The role of digital platforms in the collection of VAT/GST on online sales", which is welcomed by business and which contains practical guidance for governments on the design and implementation of a variety of approaches to involve digital platforms in the effective and efficient collection of VAT/GST on online sales.

The report highlights consultation with business and the appropriate lead time as important elements, and also presents a range of possible approaches but there is no recommendation in the report for any of the outlined measures to be the preferred one.

In fact, as the report outlines, some approaches can take more time to be implemented in practice since they have to deal with a greater complexity (such as the full liability regime) whereas other approaches (such as data sharing) are easier to be implemented.

Therefore, the question is, given the very tight timeline in Norway, whether a phased approach, starting with data sharing obligations and education of suppliers would not be more favorable.

As experience from other jurisdictions shows, a 12 month lead time after the adoption of the new rules in parliament, is something which business always advocates for, as it proves very helpful for both business and tax authorities (given the high amount of technology and process changes that have to be made in business and at the tax authorities) to be ready to comply from day 1.

It takes marketplaces at the least 9 to 12 months to carry out the necessary technical build work in order to be able to comply with the requirements. Additionally in business the IT budget is allocated to the relevant IT projects one year in advance.

Based on these aspects, we would therefore like to suggest aligning with the EU Deemed Reseller timeline for the marketplace collection to become effective as from January 1, 2021. This would give us also the time to carry out a pilot testing as from Q2 or Q3 2020, which we would also like to propose and discuss with you in further detail whether this is feasible. This would particularly also be very helpful to make Norway again a best practice when it comes to the new rules on low value goods, which is in the interest of us all and which should be the aim of us all. Clearly, all of us will work hard to make things work, however, we cannot and should not ignore reality, which is, that we all have to deal with a very complex topic in a very short timeframe.

Given that VAT is a mass transaction tax, if the start date of the new rules cannot be deferred in Norway, we need to keep in mind that we – both business and tax authorities – will have to deal with a lot of practical issues in the first couple of months until things are improved and finally resolved. Therefore, we would like to call for a pragmatic approach when it comes to errors and mistakes in the first couple of months.

Looking at Australia, what we can learn from there - in addition to the 18 month time span from public consultation to when the new rules became effective in Australia - is, that taking a more pragmatic approach after the new rules are implemented, is safeguarding the customer experience and ecommerce growth for SMEs, and is also important for ensuring a level playing field between foreign and local suppliers.

We think, that these are important aspects to consider and to learn from, particularly knowing that we have to expect challenges that will arise and need to be dealt with in practice.

3. Broad scope – requires safeguards for marketplaces

From the public consultation document it becomes clear that a broad scope is envisaged when it comes to the liability to collect VAT on the import of low value goods in Norway, which means that many marketplaces will be caught by the new deemed supplier regime and many of them might also need to rely on third party information and data to be able to act as tax collector. Whereas we understand that the definition needs to be kept broad given the rapidly evolving business models and market changes, we would like to highlight the importance of safeguards, such as, applying a limited liability principle in any case where the marketplace is reliant on third party (e.g. third party sellers) information e.g. tax rates, B2B/B2C status and ship-from address. Due to the reliance on third party information and the volumes of third party transactions, it is unfeasible and disproportionate for digital platforms to be required to check individual transactions so workable alternatives must be identified (e.g., risk-based procedures for monitoring correct VAT rates).

Additionally, given the volume of individual transactions in this sector, it is important to understand that automation and aggregation is key for business in order to make things work in practice. Business can play a valuable role in outlining the capabilities and limitations of automation, such that this can be factored into the guidance on a "Limited Liability / Good Faith clause".

The limited liability principle is also mentioned as a safeguard in the OECD´s digital platform report in chapter 2.2.4 paragraph 74 and as well in Article 5c of the EU Council Implementing Regulation adopted by the EU Council on March 12, 2019 regarding the application of the EU deemed supplier regime, which kicks in in 2021.

Finally, it is also very important to ensure VAT neutrality for digital platforms in cases of double taxation or in cases where the VAT amount is directly paid by the final consumer to the underlying supplier. Therefore, a process to eliminate double taxation and a bad debt relief process also need to be considered.

4. Making guidance / Information available & Communication strategy

As also highlighted in the OECD´s digital platform report, it is important to provide to foreign vendors and digital platforms clear and easily accessible guidance on how to apply the new rules and information, preferably online, particularly information required to register and comply with the relevant rules, such as systems to validate the VAT registration number provided by the customer or access to applicable VAT rates.

Communicating the new rules widely on a global level is also very important. This can be done with information flyers disseminated online for education purposes and by engaging directly with potential parties impacted through roadshows. Australia can be seen as best practice here, having done roadshows on their new low value goods rules all around the world trying to communicate the new rules to potential parties impacted and trying to engage with them proactively. New Zealand has developed education material on the new rules and has spread it online.

Guidance / Information and Communication, plays a key role when it comes to safeguarding VAT revenues for governments and ensuring a level playing field for business. Australia has put a lot of efforts into this, which paid greatly back for them, since the VAT revenues they collected in the first year did outnumber their projections by a very big amount as the Australian Tax Office mentioned in the Global Forum on VAT in Melbourne.

We kindly thank you for providing us the opportunity to give business input into the public consultation and look very much forward to continuing our great and constructive dialogue after the summer break.

Please feel free to reach out to us, in case we can be of any further assistance.

Sincerely,

Nicole Primmer, Business at OECD Senior Policy Director responsible for Tax

Karl-Heinz Haydl, Business at OECD VAT/GST Chair