



OECD Taxation Working Papers No. 39

Simplified registration
and collection mechanisms
for taxpayers that are not
located in the jurisdiction
of taxation: A review and
assessment

Walter Hellerstein
Stéphane Buydens
Dimitra Koulouri

<https://dx.doi.org/10.1787/64bcf5de-en>

WORKING
PAPERS

**Simplified registration and
collection mechanisms for
taxpayers that are not located
in the jurisdiction of taxation:
A review and assessment**

OECD CENTRE FOR TAX POLICY AND ADMINISTRATION

OECD TAXATION WORKING PAPERS SERIES

This series is designed to make available to a wider readership selected studies drawing on the work of the OECD Centre for Tax Policy and Administration. This publication is also a contribution to the OECD Going Digital project. Authorship is usually collective, but principal writers are named. The papers are generally available only in their original language (English or French) with a short summary available in the other.

OECD Working Papers should not be reported as representing the official views of the OECD or of its member countries. The opinions expressed and arguments employed are those of the author(s).

Working Papers describe preliminary results or research in progress by the author(s) and are published to stimulate discussion on a broad range of issues on which the OECD works.

Comments on Working Papers are welcomed, and may be sent to either ctp.contact@oecd.org or the Centre for Tax Policy and Administration, OECD, 2 rue André-Pascal, 75775 Paris Cedex 16, France. This working paper has been authorised for release by the Director of the Centre for Tax Policy and Administration, Pascal Saint-Amans.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org.

Copyright OECD 2018

*Simplified registration and collection mechanisms for taxpayers that are not located in the jurisdiction of taxation:
A review and assessment*

Abstract

This paper reviews and evaluates the efficacy of simplified tax registration and collection mechanisms for securing compliance of taxpayers over which the jurisdiction with taxing rights has limited or no authority to effectively enforce a tax collection or other compliance obligation. Although the experience of jurisdictions in addressing this problem has involved primarily consumption taxes, that experience, and the lessons that can be learned from it, are applicable as well to other tax regimes that confront the same problem. Many jurisdictions have implemented (and are in the process of implementing) simplified registration and collection regimes in the business-to-consumer (B2C) context for taxpayers that are not located in the jurisdiction of taxation. Although the evidence regarding the performance of the simplified regimes adopted by jurisdictions is still quite limited, the best available evidence at present (in the European Union) indicates that simplified regimes can work well in practice and a high level of compliance can be achieved since there is a concentration of the overwhelming proportion of the revenues at stake in a relatively small proportion of large businesses and since the compliance burden has been reduced as far as possible. It also indicates that the adoption of thresholds may be an appropriate solution to avoid imposing a disproportionate administrative burden with respect to the collection of tax from small and micro-businesses in light of the relatively modest amount of revenues at stake and that a good communications strategy is essential to the success of a simplified regime (including appropriate lead time for implementation). In sum, simplified registration and collection regimes represent an effective approach to securing tax compliance when the jurisdiction has limited or no authority effectively to enforce a tax collection or other compliance obligation upon a taxpayer.

Mécanismes d'enregistrement et de collecte simplifiés pour les redevables qui ne se trouvent pas dans la juridiction d'imposition : analyse et évaluation

Résumé

Ce document examine et évalue l'efficacité des mécanismes d'enregistrement et de collecte simplifiés destinés à assurer le respect de leurs obligations par les redevables de l'impôt sur lesquels la juridiction d'imposition dispose d'un pouvoir limité ou ne dispose pas du pouvoir d'imposer le paiement de l'impôt ou d'autres obligations. Bien que l'expérience des juridictions en cette matière soit essentiellement limitée aux impôts sur la consommation, cette expérience, et les leçons qui peuvent en être tirées, sont applicables aux autres types d'impôts qui sont confrontés au même problème. De nombreuses juridictions ont mis en œuvre (ou sont en train de le faire) des mécanismes d'enregistrement et de collecte simplifiés dans le contexte des ventes entre entreprises et consommateurs finaux (B2C) lorsque les redevables ne se trouvent pas dans la juridiction d'imposition. Bien que les données relatives à l'efficacité de ces régimes dans les juridictions où ils ont été adoptés restent limitées, les meilleurs données actuellement disponibles (dans l'Union européenne) montrent que les régimes simplifiés peuvent bien fonctionner en pratique et qu'un haut niveau de respect des obligations fiscales peut être atteint dans la mesure où la plus grande partie des revenus en cause se concentre sur un nombre relativement réduit d'entreprises et les charges administratives sont limitées autant que possible. Elles montrent également que l'adoption de seuils peut apporter une solution pour éviter l'imposition d'obligations administratives disproportionnées aux (très) petites entreprises au regard du montant des impôts en cause, et qu'une bonne stratégie de communication (y compris un temps d'adaptation raisonnable) est essentielle au succès de l'introduction d'un régime simplifié. En résumé, les mécanismes d'enregistrement et de collecte simplifiés offrent une méthode efficace pour assurer le respect des obligations fiscales lorsque la juridiction d'imposition dispose d'un pouvoir limité ou ne dispose pas du pouvoir d'imposer la collecte de l'impôt ou d'autres obligations au contribuable.

Table of contents

Summary	5
1. Introduction	7
1.1. Scope and Structure of the Report	7
1.2. Terminology and Definitional Issues	8
2. Collecting Taxes from Taxpayers That Are Not Located in the Jurisdiction of Taxation: The Problem and Possible Approaches	11
2.1. The Problem.....	11
2.2. Possible Approaches to the Problem: Overview	11
3. Review of Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation.....	15
3.1. Introduction.....	15
3.2. Overview of Jurisdictions’ Implementation of Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation	15
3.3. Jurisdictions’ Experience with Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation.....	19
4. An Evaluation of the Efficacy of Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation.....	26
4.1. Overarching Considerations.....	26
4.2. Specific Design Features.....	28
5. Concluding Observations.....	30

Summary

This paper discusses how the key challenge for jurisdictions seeking to exercise their taxing rights over taxpayers that are not located in the jurisdiction of taxation can be addressed by the use of simplified registration and collection mechanisms.

The problem considered by this report – how to collect tax from taxpayers that are not located in the jurisdiction of taxation – is a problem encountered by any tax regime where the jurisdiction asserts taxing rights over a tax base but this jurisdiction has limited power to compel the taxpayer to remit the tax. Although the experience of jurisdictions in addressing this problem has involved primarily consumption taxes, in particular value added taxes (VAT) and retail sales taxes (RST), that experience (and the lessons that can be learned from it) is applicable as well to other tax regimes, whether involving direct or indirect taxes, that confront the same problem.

This paper considers two principal approaches to addressing the problem:

- Jurisdictions may seek to enlist some other participant involved in the transaction or activity that generates the tax base over which it asserts taxing rights, and over whom it does have enforcement authority to collect the tax or otherwise satisfy the taxpayer's compliance obligation (e.g., withholding taxes). To this regard, it is shown that, although customers and intermediaries can, in some circumstances, play an important role in the collection of the tax (for example the business customer located in the taxing jurisdiction in the context of a business-to-business transaction or e-commerce marketplaces in the context of business-to-final consumer digital sales), they may be much less efficient in other contexts. Indeed, according to the OECD work (the International VAT/GST Guidelines and the BEPS Action 1 Report Addressing the Challenges of the Digital Economy), customer collection is generally regarded as an inappropriate approach to indirect tax collection in the business-to-consumer (B2C) context given its low level of compliance and its associated costs of enforcement. For analogous reasons, it is also generally recognised that withholding taxes (for example on payment as part of options to address the broader direct tax challenges of the digital economy) are not an effective mechanism for tax collection in the B2C context.
- As an alternative, jurisdictions may adopt a taxpayer registration and collection mechanism, and, in light of the absence of enforcement authority over the taxpayer, may seek to make compliance sufficiently easy or attractive to induce taxpayers to comply with their tax obligations. The paper then reviews the simplified registration and collection regimes that jurisdictions have implemented or are about to implement. It is generally recognised that this alternative is more appropriate in the B2C context. Many jurisdictions have implemented (and are in the process of implementing) simplified registration and collection regimes in the B2C context for taxpayers that are not located in the jurisdiction of taxation in the VAT and RST area. Although the evidence regarding the performance of the simplified regimes adopted by jurisdictions is still quite limited, because these regimes generally have only become operational on a widespread basis recently, the best available evidence shows that these simplified regimes work well in practice. According to the most significant experience i.e. the experience in the European Union, a high level of compliance can be achieved and substantial levels of revenue can be collected since

there is a concentration of the overwhelming proportion of the revenues at stake in a relatively small proportion of large businesses and since the compliance burden has been reduced as far as possible. Against that background, it is highly likely that an even greater number of jurisdictions will embrace simplified collection regimes in the future, especially in light of the growth of the digital economy and more particularly, B2C digital transactions¹. In the VAT area, simplified registration and collection mechanisms issues are dealt with in the International VAT/GST Guidelines and the Report on Mechanisms for the Effective Collection of VAT/GST.

This paper also notes that compliance costs for small and micro-businesses can be relatively high compared to the proportion of revenues collected from such businesses and that the adoption of thresholds may be an appropriate solution to avoid imposing such a disproportionate administrative burden in light of the relatively modest amount of revenues at stake. It also points out that a good communications strategy is essential to the success of a simplified regime (including appropriate lead-time for implementation). The exchange of information and international administrative co-operation should also play a significant role in both encouraging taxpayers to comply and detecting non-compliance.

¹ The growth of the digital economy and its implications for policymakers, including around taxation issues, are the subjects of a major, ongoing interdisciplinary project at the OECD. For more information on the project “Going Digital”, see the [interim project report](#) and the Going Digital website (www.oecd.org/going-digital).

1. Introduction

1.1. Scope and Structure of the Report

It is appropriate at the outset to delineate the scope and structure of the report and to situate the report within the framework of other developments regarding the taxation of the digital economy.

1.1.1. Scope of the Report

The focus of this report is on situations where the taxpayer² is not located in the jurisdiction of taxation. The key challenge associated with such a scenario is how the jurisdiction seeking to exercise its taxing rights is able to ensure compliance in circumstances where the taxpayer is not located in the jurisdiction of taxation. In addressing this question, this report focuses on the use of simplified registration and collection mechanisms to respond to this challenge. While we can draw upon extensive experience in the area of indirect taxation, especially in the case of the value added tax (VAT)³ and retail sales tax (RST),⁴ this report is directed to simplified taxpayer registration and collection mechanisms applicable to all taxpayers that are not located in the jurisdiction of taxation. Accordingly, any simplified taxpayer registration and collection mechanism, whether involving direct or indirect taxes, VAT or RST, or some other tax base (however defined) falls within the scope of the report if it is applicable to taxpayers that are not located in the jurisdiction of taxation under consideration.

Despite the broad relevance of this report as a matter of principle to simplified registration and collection mechanisms, regardless of the tax, that apply to taxpayers that are not located in the jurisdiction of taxation, it is also appropriate to recognise that, as a matter of practice, jurisdictions' experience with such registration and collection mechanisms involves primarily VAT and other consumption taxes. The explanation for this practical distinction is two-fold. First, as explained further below, under VAT and other consumption tax regimes certain transactions commonly give rise to a situation in which the taxpayer is not located in the jurisdiction of taxation (i.e., the jurisdiction seeking to exercise its taxing rights). Jurisdictions have responded to this problem by adopting simplified registration

² In this report, the term “taxpayer” is used to refer to the person responsible for remitting tax to the tax authorities. See further discussion in Section 1.1.2.

³ For ease of reading, the terms “value added tax” and “VAT” are used to refer to any national tax by whatever name or acronym it is known, such as Goods and Services Tax (GST), which embodies the basic features of a value added tax i.e., a broad-based tax on final consumption collected from but in principle not borne by businesses through a staged collection process whatever method is used for determining the tax liability (e.g., invoice-credit method or subtraction method).

⁴ The term “retail sales tax” in principle refers to a single-stage levy on consumer expenditures (i.e., it applies to final sales of goods and services for personal use and consumption). Accordingly, a theoretically ideal RST would apply to all consumer purchases of goods and services and would exclude business inputs from the tax base. In practice, however, RSTs have often been confined largely to sales of tangible personal property and apply only selectively to services, as in the US subnational RST.

and collection mechanisms. Second, as the OECD has observed, “while having a market in a country is clearly valuable to a seller, this condition by itself has not created a taxing right in the area of direct taxation to this point.”⁵ Consequently, in contrast to the indirect tax context, the assignment of taxing rights from economic activity has not historically given rise to a situation in which the taxpayer is not located in the jurisdiction of taxation in the direct tax context.

1.1.2. Structure of the Report

The substance of the report is divided into three parts: (1) a general introduction to the issues that jurisdictions with taxing rights confront in seeking to collect taxes from taxpayers that are not located in their jurisdiction, and the possibilities that simplified taxpayer registration and collection mechanisms offer in addressing those issues; (2) an overview of the simplified registration and collection mechanisms that jurisdictions have implemented (or are implementing) to collect taxes from taxpayers not located in the jurisdiction, particularly with regard to supplies of services, intangibles, and (in some instances) low value goods,⁶ and to summarise available information regarding jurisdictions’ experience with such regimes; and (3) an evaluation of the efficacy of these mechanisms in an effort to identify the features of simplified registration and collection mechanisms that appear to lead to their success in terms of taxpayer compliance and revenue collection.

1.2. Terminology and Definitional Issues

It is appropriate at the outset of the report to explain and clarify certain terminology or definitional issues that might otherwise give rise to misunderstanding and confusion in the body of the report. In particular, it is important to understand the meaning and consistent use of the term “taxpayers that are not located in the jurisdiction of taxation” throughout

⁵ OECD (2015), *Addressing the Tax Challenges of the Digital Economy, Action 1-2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, Chapter 7, Part 7.3, paragraph 259. In the US subnational context, however, having a market in a state does create a taxing right in the area of direct taxation. Federation of Tax Administrators, *State Apportionment of Corporate Income* (2017), available at <https://www.taxadmin.org/assets/docs/Research/Rates/apport.pdf>. (revealing that US subnational corporate income tax base is assigned to jurisdictions largely on the basis of the destination of the corporate taxpayer’s sales). In addition, proposals have recently been advanced for attributing taxing rights to the market jurisdiction as an underlying principle for a new approach to business taxation. Alan J. Auerbach, “Demystifying the Destination-Based-Cash-Flow Tax,” *Brookings Papers on Economic Activity*, BPEA Conference Drafts, September 7-8, 2017, available at https://www.brookings.edu/wp-content/uploads/2017/09/5a_auerbach.pdf.

⁶ In principle, border controls may constitute an effective mechanism for collecting VAT on high value goods even when the taxpayer is not located in the jurisdiction of taxation. OECD (2017), *International VAT/GST Guidelines*, OECD Publishing, Paris, paragraph 1.13. The focus of this report, like the focus of other OECD work on the indirect tax challenges of the digital economy, is directed at the collection of tax on services, intangibles, and low value goods, with respect to which border controls are generally regarded as ineffective when the taxpayer is not located in the jurisdiction of taxation. See OECD (2015), *Addressing the Tax Challenges of the Digital Economy*, note 4, Chapter 8; OECD (2017), *International VAT/GST Guidelines*, paragraph 1.14; Chapter 3, Part, C.3.2.

this report. At first glance, it might appear that the term is overly wordy and that a more suitable term might be simply “foreign taxpayer,” “non-resident taxpayer,” or “non-established taxpayer.” Indeed, discussions of the tax challenges of the digital economy often use these terms interchangeably without any suggestion that they have different meanings.⁷

The potential problem with employing the terms “foreign taxpayer,” “non-resident taxpayer,” “non-established taxpayer,” and “taxpayer that is not located in the jurisdiction of taxation” interchangeably, however, particularly for readers who may not be familiar with the intended meaning of those terms in the context of registration and collection mechanisms, is that it may lead to misunderstanding. For example, unless the terms are defined as having the same specified meaning (perhaps in a commonly accepted glossary), a foreign or non-resident taxpayer may in fact have an establishment in a jurisdiction and thus be neither a non-established taxpayer nor a taxpayer that is not located in the jurisdiction of taxation. Use of the term “foreign taxpayer” or “non-resident taxpayer” to mean a “taxpayer that is not located in the jurisdiction of taxation” therefore might not be immediately or fully understood by many readers.⁸ Similarly, use of the term “non-established” taxpayer could give rise to confusion, because of the different meanings associated with the term “permanent establishment” and “fixed establishment” under jurisdictions’ direct and indirect tax regimes.⁹

Accordingly, for reasons set forth in the preceding paragraph, this report employs the term “taxpayers that are not located in the jurisdiction of taxation” to encompass *all taxpayers with respect to which the jurisdiction exercising the taxing rights may have limited or no authority effectively to enforce a collection or other compliance obligation upon the taxpayer*.¹⁰ The use of this term is deliberately adopted as a non-technical description that appropriately identifies the problem to which the report is directed and is not intended to have any implications regarding the legal status of the taxpayer.

⁷ For example, the glossary to the OECD’s guidance on implementing the VAT/GST Guidelines, OECD (2017), *Mechanisms for the Effective Collection of VAT/GST Where the Supplier Is Not Located in the Jurisdiction of Taxation*, available at <http://www.oecd.org/tax/consumption/mechanisms-for-the-effective-collection-of-vat-gst.htm>, explicitly defines “foreign supplier” to mean a “supplier not located in the jurisdiction of taxation.”

⁸ Thus to readers who are more familiar with direct than indirect taxation, no problem is more familiar than the attribution of a “foreign” or “non-resident” taxpayer’s profits to the taxpayer’s permanent establishment in the jurisdiction of taxation. See OECD (2015) *Model Tax Convention on Income and Capital 2014* Articles. 4, 5, and 7, OECD Publishing, Paris.

⁹ Indeed, to address this problem, the OECD’s *International VAT/GST Guidelines*, which employ the term “establishment” in defining a multiple location entity, provide: For the purpose of these Guidelines, it is assumed that an establishment comprises a fixed place of business with a sufficient level of infrastructure in terms of people, systems and assets to be able to receive and/or make supplies. Registration for VAT purposes by itself does not constitute an establishment for the purposes of these Guidelines. Countries are encouraged to publicise what constitutes an “establishment” under their domestic VAT legislation. OECD (2017), *International VAT/GST Guidelines*, footnote 6, paragraph 3.22, note 24.

¹⁰ This is essentially the same definition adopted by the glossary to the OECD’s guidance on implementing the VAT/GST Guidelines (see footnote 7).

For similar reasons, the use of the term “taxpayer” is intended simply to identify the person or entity with an obligation to remit the tax and is not intended to have any implications regarding the person’s or entity’s legal liability in respect of the tax or the economic incidence of the tax.¹¹ For example, in jurisdictions in which the legal liability to pay a consumption tax falls upon the consumer, who may thus be considered to be the “taxpayer” in a legal sense,¹² the vendor with an obligation to collect the tax from the consumer and remit the tax to the tax authorities would nevertheless be considered “the taxpayer...not located in the jurisdiction of taxation” for purposes of this report.

¹¹ For a more detailed examination of these issues see Milanez, A. (2017), “Legal tax liability, legal remittance responsibility and tax incidence: Three dimensions of business taxation”, OECD Taxation Working Papers, No. 32, OECD Publishing, Paris. <http://dx.doi.org/10.1787/e7ced3ea-en>.

¹² This describes the situation under the US subnational RST, where the consumer in a cross-border supply is typically the “taxpayer” with respect to the tax on the in-state “use” of the purchased goods or services equal to the sales tax that would have been due on a wholly domestic purchase.

2. Collecting Taxes from Taxpayers That Are Not Located in the Jurisdiction of Taxation: The Problem and Possible Approaches

2.1. The Problem

The fundamental problem to which this report is directed – collecting taxes from taxpayers that are not located in the jurisdiction of taxation – is potentially encountered by any tax regime where the jurisdiction asserts taxing rights over a tax base but the taxpayer is not located in that jurisdiction. Thus, whether a jurisdiction asserts taxing rights over (a) receipts from the sale of electronic services to a private consumer in the jurisdiction by a taxpayer not located in the jurisdiction, or (b) income earned by a taxpayer not located in the jurisdiction, or (c) a tax base, however defined, reflecting values associated with the taxpayer’s relationship with the consumers in the jurisdiction (e.g., a relationship defined by the provision of services by the taxpayer in exchange for the provision of user data) when the taxpayer is not located in the jurisdiction, one fundamental problem is common to all of these scenarios: How does the taxing jurisdiction enforce collection of taxes with respect to the tax base over which it asserts taxing rights?

The preceding paragraph illustrates what prior work, recognised by the OECD, has identified as “a distinction ... between jurisdiction to impose taxes and jurisdiction to enforce them, also called ‘the enforcement jurisdiction’ and emphasis is placed on practicality over theory.”¹³ That distinction is central to the focus of this report. The hypothetical examples in the preceding paragraph may well raise important theoretical questions as to whether the taxing jurisdiction may properly assert taxing rights with respect to the tax base there described. But such questions lie beyond the scope of this report. This report proceeds from the premise that taxing rights *do exist* with respect to a tax base involving taxpayers that are not located in the jurisdiction of taxation. The question then becomes the practical one of *how* a jurisdiction can compel or induce compliance with obligations to collect tax on a tax base over which it has legitimate taxing rights. It is that practical question that lies at the heart of this report.

2.2. Possible Approaches to the Problem: Overview

If a jurisdiction with taxing rights over a defined tax base has limited or no authority effectively to enforce a collection or other compliance obligation upon a taxpayer, it has two fundamental options in seeking to secure compliance with its tax obligations. First, it may seek to enlist some other participant involved in the transaction or activity that generates the tax base over which it has taxing rights, and with respect to whom it does have enforcement jurisdiction, to collect the tax or otherwise satisfy the taxpayer’s compliance obligation (e.g., withholding taxes). Second, it may adopt a taxpayer registration and collection mechanism, and, in light of the absence of enforcement jurisdiction over the taxpayer, seek to make compliance sufficiently easy or attractive to

¹³ OECD (2015), *Addressing the Tax Challenges of the Digital Economy*, footnote 5, paragraph 21 (citing Hellerstein, W. (2009), “Jurisdiction to Impose and Enforce Income and Consumption Taxes: Towards a Unified Conception of Nexus in Value Added Tax and Direct Tax: Similarities and Differences,” IBFD, the Netherlands).

induce taxpayers to comply with their tax obligations notwithstanding the jurisdiction's absence of power to compel compliance.¹⁴ Whichever option is chosen, it is also recognised that enhanced international co-operation may have a significant impact on compliance.¹⁵

Although the choice between the two options identified in the preceding paragraph is fundamental, the options are not mutually exclusive.¹⁶ Thus, the taxing jurisdiction may determine that enlisting participants in the activity that generates the tax base may be the most effective approach to enforcing the jurisdiction's taxing rights over some portions of the tax base whereas adoption of a simplified registration and collection mechanism may be the most effective approach to securing compliance with taxpayers' obligations over other portions of the tax base.

Prior work regarding the indirect tax challenges of the digital economy has identified essentially two alternative types of participants in the activity generating the taxing rights who may be enlisted in the tax collection process when they are subject to the taxing jurisdiction's enforcement power: customers and intermediaries.¹⁷ It is widely recognised, for example, that in business-to-business (B2B) transactions customer collection may be an appropriate approach to the collection of tax on cross-border supplies of services and intangibles.¹⁸ Similarly, it is also recognised that certain intermediaries may potentially play an important role in tax collection when the taxpayer is not located in the jurisdiction of taxation.¹⁹ Thus, it is increasingly recognised that certain intermediaries (e.g., e-commerce marketplaces) can potentially contribute considerably to the effective collection of VAT/GST on online sales by foreign suppliers. This is the subject of ongoing work by the OECD's Working Party No. 9

Customer collection, however, is generally regarded as an inappropriate approach to indirect tax collection in the business-to-consumer (B2C) context. In the B2C context, the level of compliance is likely to be low, because private 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, and the costs of enforcing collection of small amounts of VAT from large numbers of private consumers are likely to outweigh the revenue

¹⁴ There may be other incentives for a taxpayer to comply, such as the desire to protect its reputation and demonstrate its commitment to contributing to the proper functioning of the tax system and society in general.

¹⁵ *Tax Challenges Arising from Digitalisation –Interim Report 2018*, paragraphs 290 and 299.

¹⁶ This point has been recognised in prior OECD work. OECD (2017), *Mechanisms for the Effective Collection of VAT/GST*, footnote 7, paragraph 28.

¹⁷ OECD (2017), *Mechanisms for the Effective Collection of VAT/GST*, footnote 7, Chapter 1, Sections C.2, C.3.

¹⁸ OECD (2017), *International VAT/GST Guidelines*, footnote 6, paragraph 3.149.

¹⁹ OECD (2017), *Mechanisms for the Effective Collection of VAT/GST*, footnote 7, Chapter 1, Section C.3.

involved.²⁰ For analogous reasons, it is generally recognised that withholding taxes are not an effective mechanism for tax collection in the B2C context.²¹

Accordingly, simplified taxpayer registration and collection mechanisms will necessarily continue to play a major role, particularly given the increasing range and number of B2C transactions occurring as a result of digitalisation. The balance of this report is therefore devoted to a consideration of simplified taxpayer registration and collection mechanisms.

In examining the use of simplified taxpayer registration and collection mechanisms for collecting taxes from taxpayers that are not located in the jurisdiction of taxation, the report draws freely and heavily from prior OECD work addressing taxation of the digital economy. Thus the OECD's 2015 Final Report on *Addressing the Tax Challenges of the Digital Economy*²² recognises simplified registration and compliance mechanisms for non-resident suppliers as one approach to the indirect tax challenges of the digital economy²³ as do the OECD's *International VAT/GST Guidelines* (hereafter "the Guidelines").²⁴ Most recently, in October 2017 the OECD released *Mechanisms for the Effective Collection of VAT/GST Where the Supplier Is Not Located in the Jurisdiction of Taxation*, which provides detailed guidance on simplified registration and collection regimes for the

²⁰ OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter 3, Section C.3.2, paragraph 3.130. A recent US Government study on subnational RST collection reinforces this point. US Governmental Accountability Office (2017), *Sales Taxes: States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs*, Report to Congressional Requesters, GAO-18-114. The report declares:

Because state and local governments currently do not have the authority to require businesses to collect tax on all remote sales, states generally require taxpayers who were not charged tax on their purchases from out-of-state vendors to pay a use tax on those purchases. However, with the exception of purchases that are required to be registered with the state, such as vehicles, voluntary compliance is thought to be extremely low. For those states that permit taxpayers to report use taxes on their income tax returns, it is estimated that only about 1 to 2 percent of returns include use tax payments.

GAO Report, p. 14. See footnote 12 for further description of the US subnational use tax.

²¹ OECD (2015), *Addressing the Tax Challenges of the Digital Economy*, footnote 5, Chapter 7, Part 7.6.3.2. As the OECD report declared:

In the case of B2C transactions ... requiring withholding would be more challenging as private consumers have little experience nor incentive to declare and pay the tax due. Moreover, enforcing the collection of small amounts of withholding from large numbers of private consumers would involve considerable costs and administrative challenges.

OECD (2015), *Addressing the Tax Challenges of the Digital Economy*, note 4, Chapter 7, Part 7.6.3.2, paragraph 296. See also Brauner, Y., and A. Baez (2015), "Withholding Taxes in the Service of BEPS Action 1: Address the Tax Challenges of the Digital Economy," IBFD, Part 4.2 ("compelling consumers to withhold would be logistically difficult"), available at www.ibfd.org.

²² OECD (2015), *Addressing the Tax Challenges of the Digital Economy*, note 4.

²³ OECD (2015), *Addressing the Tax Challenges of the Digital Economy*, note 4, Chapter 8, Part 8.2.

²⁴ OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter 3, Sections C.3.2, C.3.3.

collection of VAT on supplies of services and intangibles when the taxpayer is not located in the jurisdiction of taxation.²⁵

²⁵ OECD (2017), *Mechanisms for the Effective Collection of VAT/GST*, footnote 7.

3. Review of Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation

3.1. Introduction

This section of the report provides a general review of simplified registration and collection regimes that jurisdictions have implemented or appear to be on the verge of implementing for collection of tax when the taxpayer is not located in the jurisdiction of taxation. For jurisdictions that have implemented simplified regimes, it summarises available information regarding their experience with such regimes.

It has already been noted that, as a matter of practice, the experience of jurisdictions with simplified registration and collection regimes has involved primarily VAT and other consumption taxes.²⁶ It was also noted, however, that the fundamental problem at which the simplified VAT collection and registration mechanisms are directed – collecting taxes from taxpayers that are not located in the jurisdiction of taxation – is potentially encountered by any tax regime where the jurisdiction asserts its taxing rights over a tax base but the taxpayer is not located in the jurisdiction.²⁷ Accordingly, while the ensuing discussion focuses on mechanisms for the effective collection of VAT and other consumption taxes when the taxpayer is not located in the jurisdiction of taxation, the discussion is applicable as well to other tax regimes where a jurisdiction asserts rights over a tax base where the taxpayer is not located in the jurisdiction of taxation.

3.2. Overview of Jurisdictions' Implementation of Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation

3.2.1. Implementation of the OECD's Recommendation for Simplified Registration and Compliance Regimes

In conjunction with its adoption of the Guidelines, which generally recognise that the jurisdiction with taxing rights over internationally traded services and intangibles (the jurisdiction of taxation) is the jurisdiction where the customer is located,²⁸ the OECD has indicated that, at the present time, the most effective and efficient approach to ensuring the appropriate collection of VAT on cross-border B2C supplies when the supplier is not located in the jurisdiction of taxation is to require the supplier to register and account for the VAT in the jurisdiction of taxation.²⁹ Moreover, and of central importance to this report, the Guidelines recommend that when implementing a registration-based collection mechanism for suppliers that are not located in the jurisdiction of taxation, jurisdictions

²⁶ See Section 1.1.1 above.

²⁷ See Section 1.2 above.

²⁸ OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter 3.

²⁹ OECD (2017), *International VAT/GST Guidelines*, footnote 6, paragraph 3.131.

should consider establishing a simplified registration and compliance regime to facilitate compliance for such suppliers.³⁰

The Guidelines note that the highest feasible levels of compliance with tax registration and remittance obligations by taxpayers that are not located in the jurisdiction of taxation 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.³¹ The Guidelines further recognise that appropriate simplification is particularly important to facilitate compliance for taxpayers faced with obligations in multiple jurisdictions. In connection with its recommendation that jurisdictions consider adopting simplified registration and collection regimes for remittance of VAT in respect of B2C supplies of services and intangibles from suppliers that are not located in the jurisdiction of taxation, the Guidelines also identify the principal features of such a regime.³² Subsequent OECD work provides further guidance on mechanisms for the effective collection of VAT when the supplier is not located in the jurisdiction of taxation.³³

A large number of jurisdictions across the globe, including the majority of OECD and G20 countries, have already implemented mechanisms based on simplified registration and compliance regimes for the effective collection of VAT/GST on inbound B2C digital supplies.³⁴ Specifically, thirty-nine jurisdictions (including the 28 member states of the EU, Australia, Belarus, Iceland, India, Korea, New Zealand, Norway, Russia, Singapore, South Africa, and Turkey) have implemented (or are in the process of implementing) simplified registration and collection regimes.

3.2.2. Summary of Specified Jurisdictions' Simplified Registration and Compliance Regimes

As noted in the preceding paragraph, a number of jurisdictions have adopted simplified registration and collection mechanisms for taxpayers that are not located in the jurisdiction of taxation in connection with the application of their consumption tax regimes to cross-border B2C supplies of services and intangibles. The following paragraphs briefly summarise the simplified regimes adopted by specified jurisdictions.

In 2002, the European Union (EU), which currently comprises 28 member states, adopted a simplified registration and collection mechanism (effective 1 July 2003) for certain electronically supplied B2C services from non-EU suppliers to EU customers under the so-called E-Commerce Directive.³⁵ The E-Commerce Directive required a non-EU supplier

³⁰ OECD (2017), *International VAT/GST Guidelines*, footnote 6, paragraph 3.132.

³¹ OECD (2017), *International VAT/GST Guidelines*, footnote 6, paragraph 3.132.

³² OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter 3, Parts C.3.2, C3.3.

³³ OECD (2017), *Mechanisms for the Effective Collection of VAT/GST*, footnote 7. These are also briefly summarised in Section 4.2 of this report.

³⁴ OECD (2018), *Interim Report on the Tax Challenges Arising from Digitalisation*, Annex 3B “Implementation of the Measures on VAT/GST covered by the BEPS Action 1 Report”

³⁵ See Directive 2002/38 of the Council of May 7, 2002 on the Value Added Tax Arrangements Applicable to Radio and Television Broadcasting Services and Certain Electronically Supplied Services, 2002 O.J. (L 128) 1 (EC); Council Regulation 792/2002 of May 7, 2002 on Administrative Cooperation in the Field of Indirect Taxation (VAT) as Regards Additional

making online supplies of such services to final consumers in the EU to register, collect, and remit VAT to the relevant EU member state under simplified administrative procedures.³⁶ Beginning in 2015, the EU effectively extended this approach to equivalent intra-EU cross-border B2C services.³⁷

In 2016, New Zealand enacted legislation (effective 1 October 2016) for application of the Goods and Services Tax (GST) to cross-border supplies to New Zealand consumers of supplies of “remote” services and intangibles by offshore suppliers.³⁸ The new rules require non-resident suppliers of “remote” services (including e-books, music, videos, and software purchased from offshore websites) to New Zealand consumers to register and return GST on these supplies if they exceed or are expected to exceed NZ\$60,000 in a 12-month period.³⁹ The Special Report from New Zealand Inland Revenue describing the legislative changes notes that they “broadly follow OECD guidelines, as well as similar rules that apply in other jurisdictions, such as Member States of the European Union, Norway, Korea, Japan, Switzerland, and South Africa.”⁴⁰

Australia enacted rules similar to those enacted by New Zealand with respect to the Australian GST (effective 1 July 2017).⁴¹ In addition, the Australian Parliament recently enacted legislation (effective 1 July 2018) to apply the GST to low value imported goods,

Measures Regarding Electronic Commerce, art. 1, 2002 O.J. (L 128) 1, 2 (EC) [hereinafter E-Commerce Directive] (outlining the “special scheme” for electronically supplied services). These rules are now embodied in the current EU VAT Directive. Council Directive 06/112, arts. 358a-369, 2006 O.J. (L 347) 1 (EC) [hereinafter EU VAT Directive].

³⁶ EU VAT Directive, footnote 35, arts. 358a-369.

³⁷ See EU VAT Directive, footnote 35, arts. 369a-369k. It should be recognised that intra-EU B2C supplies involve taxpayers (i.e., suppliers) that are subject to EU legal and enforcement constraints even if they are not “located in the jurisdiction of taxation” in a physical sense. Nevertheless the application of simplified registration and collection mechanisms to intra-EU B2C cross-border services raises issues similar to those raised by the application of such mechanisms to cross-border services from non-EU suppliers to EU customers, and countries’ experiences under both the so-called “Union Scheme” and the “Non-Union Scheme” are therefore relevant to discussion of registration and collection mechanisms for taxpayers that are not located in the jurisdiction of taxation.

³⁸ See Policy and Strategy, Inland Revenue, New Zealand, Special Report, “GST on cross-border supplies of remote services” (May 2016), available at <http://taxpolicy.ird.govt.nz/publications/2016-sr-gst-cross-border-supplies/overview>.

³⁹ See Policy and Strategy, footnote 38, p. 1.

⁴⁰ See Policy and Strategy, footnote 38, p. 6.

⁴¹ See “GST registration system for non-resident businesses,” (describing and providing portal for simplified GST registration available: <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Doing-business-in-Australia/Australian-GST-registration-for-non-residents/#FullGSTregistrationwithABNSimplifiedGSTregistrationssystemforoverseasbusinesses>)

using a streamlined collection model that places the responsibility for assessing, collecting, and remitting the tax on foreign suppliers.⁴²

In the subnational context, in the United States many states have adopted a simplified RST registration and collection regime as an alternative to their traditional compliance regimes in conjunction with their membership in the Streamlined Sales and Use Tax Agreement (SSUTA), which became effective in 2005.⁴³ The fundamental purpose of SSUTA is “to simplify and modernise sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance.”⁴⁴ Registration under SSUTA is voluntary,⁴⁵ but SSUTA provides a number of inducements to registration, including one-stop multistate electronic registration; waiver of registration fees; streamlined return and remittance procedures; relief from certain liabilities; enhanced compensation for tax collection obligations; and an amnesty for certain uncollected or unpaid taxes for prior tax periods.⁴⁶ A primary target of SSUTA are remote sellers who are not located in the jurisdiction of taxation.

The US subnational state of Alabama, which is not a member of SSUTA (described in the preceding paragraph), has adopted its own simplified tax compliance regime, “The

⁴² See Australian Government, Productivity Commission Inquiry Report, Collection Models for GST on Low Value Imported Goods, No. 86, 31 October 2017, available at <http://www.pc.gov.au/inquiries/completed/collection-models/report>.

⁴³ Streamlined Sales and Use Tax Agreement, available at www.streamlinedsalestax.org (SSUTA). For a detailed description and analysis of SSUTA, see J. Hellerstein, et al., *State Taxation* Chapter 19A (Thomson Reuters 2018 rev.)

⁴⁴ SSUTA, footnote 43, Section 102.

⁴⁵ Prior to the decision of *South Dakota v. Wayfair, Inc.* (US Supreme Court, No. 17-494, June 21, 2018), US constitutional jurisprudence prohibited states from requiring taxpayers that were not physically present in a state to collect the RST on sales into the state. *Quill Corp. v. North Dakota*, 504 US 298 (1992). In *Wayfair*, the court overruled *Quill*, concluding that “the physical presence rule of *Quill* is unsound and incorrect.” *Wayfair*, p. 22. The court in *Wayfair* did not specify in detail the precise criteria under which states may constitutionally impose collection obligations upon taxpayers who are not located in the jurisdiction of taxation. It is nevertheless significant that the court in *Wayfair* explicitly identified SSUTA as one of “several features of South Dakota’s tax system that appear designed to prevent discrimination against or undue burden upon interstate commerce.” *Wayfair*, p. 23. Thus the court in *Wayfair* observed:

South Dakota is one of more than 20 States that have adopted the Streamlined Sales and Use Tax Agreement. This system standardizes taxes to reduce administrative and compliance costs: It requires a single, state level tax administration, uniform definitions of products and services, simplified tax rate structures, and other uniform rules. It also provides sellers access to sales tax administration software paid for by the State. Sellers who choose to use such software are immune from audit liability.

Wayfair, p. 23. The court’s opinion in *Wayfair* will likely encourage states to adopt simplified registration and collection regimes because they reflect post-*Wayfair* constitutional norms for imposing collection obligations upon taxpayers not located in their jurisdiction, and some states have already expressed interest in embracing SSUTA or similar simplifications in their tax regimes in light of *Wayfair*.

⁴⁶ These provisions are all set forth SSUTA, footnote 44, and discussed in detail in Hellerstein, footnote 43.

Simplified Seller Use Tax Remittance Act,⁴⁷ directed specifically at taxpayers that are not located in the state. The legislation allows remote sellers to register voluntarily to collect Alabama tax on sales into the state, report electronically, and avoid the complexity of calculating combined state and local tax rates. In addition, sellers generally may retain 2% of the tax they collect.

3.3. Jurisdictions' Experience with Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation

3.3.1. The EU's Simplified Registration and Collection Regime

Introduction

The EU and its member states have been at the forefront of the adoption and implementation of simplified mechanisms for collecting tax from taxpayers that are not located in the jurisdiction of taxation (see Section 3.2.2). In November 2016, the EU Commission issued a comprehensive report assessing the implementation of the simplified registration and collection scheme for cross-border B2C electronic supplies.⁴⁸ Because the EU Commission report represents the most complete and in depth examination of jurisdictions' experience with simplified registration and collection mechanisms to date, it is worthy of detailed consideration here. Moreover, as the report recognises, the simplified EU registration and collection regime “will serve as a test case not only for the European Union, but also for the OECD and more globally, since such a principle has been endorsed as a global standard on VAT.”⁴⁹ This section summarises the principal findings of the report regarding the experience of the EU member states with simplified registration and collection mechanisms.

Background to EU simplified compliance regime and EU Commission report

As noted in Section 3.2.2, the EU's simplified registration and collection regime for remittance of tax on certain cross-border B2C electronic supplies was initially introduced in 2003 in connection with supplies from non-EU suppliers to EU customers under the so-called VAT on electronic services (VoES) and the “One Stop Shop.” The simplified VoES regime was effectively extended in 2015 to a broader range of B2C services (telecommunications, broadcasting, and electronic services (TBE services)), and to intra-EU cross-border supplies under the so-called “Mini One Stop Shop” (MOSS). The current (post-2015) regime applicable to B2C supplies of TBE services from non-EU suppliers to EU customers is sometimes called the “Non-Union Scheme” and the regime applicable to intra-EU B2C TBE supplies of TBE is sometimes called the “Union Scheme.”

⁴⁷ Code of Alabama, Sections 40-23-191 et seq. (2018).

⁴⁸ Deloitte, *VAT Aspects of cross-border e-commerce - Options for modernization, Final report – Lot 3, Assessment of the implementation of the 2015 place of supply rules and the Mini-One Stop Shop* (November 2016), available at https://ec.europa.eu/taxation_customs/sites/taxation/files/vat_aspects_crossborder_e-commerce_final_report_lot3.pdf [hereafter EU Commission Report].

⁴⁹ EU Commission Report, footnote 48, p. 144.

The EU Commission report is the result of a detailed inquiry into the implementation of the 2015 regime for remittance of VAT on cross-border B2C supplies of TBE services when the taxpayer is not located in the jurisdiction of taxation. In addition to its factual findings on the impact of the simplified regime on VAT registration, revenues, and administration, the report provides a qualitative assessment of its evidentiary findings in an effort to identify best practices to increase the probability of successful implementation of simplified registration and collection regimes. Although the report focuses on the post-2015 regime, it also reflects data from the last three years of the application of the VoES (2012-2014) to B2C supplies of electronic services from non-EU suppliers to EU customers.

In conjunction with its adoption of rules generally assigning taxing rights over B2C supplies of TBE services to the customer's location in accord with the Guidelines (i.e., implementation of the destination principle), the EU also adopted a simplified registration and collection regime for remittance of tax on such cross border supplies. As the EU Commission report observed, the Guidelines "recommend vendor registration as the most efficient method for VAT collection on cross-border B2C services."⁵⁰ More importantly for our purposes, the report further recognised that "the use of a simplified registration and compliance regime is recommended when implementing a vendor registration based collection system, in order to assure proportionality and avoid excessive administrative burdens on business."⁵¹

The EU's simplified registration and compliance regime for VAT collection on cross-border B2C TBC services was embodied in the MOSS. The MOSS was implemented to mitigate the administrative burden of complying with a tax remittance regime where taxpayers are not located in the jurisdiction of taxation by allowing the taxpayer (i.e., the supplier) to report its cross-border B2C supplies through an electronic portal in the member state of its choice or, in the case of an EU supplier, in the member state where it is established.

Assessment of EU's Simplified Registration and Collection Regime

Overall response to simplified regime. The key conclusion of the EU Commission report's qualitative assessment of simplified registration and collection regimes embodied in the MOSS for taxpayers that are not located in the jurisdiction of taxation is that they work well. For EU member states, which were required to develop an electronic web portal to accommodate registration, submission and handling of returns, and payment processes, the report notes that "[i]t can be confidently concluded that ... the MOSS functions well."⁵² Similarly, from businesses' perspective, "[o]verall, it can be confidently concluded that ... the MOSS functions well as a reporting tool, mitigating the administrative burden for businesses supplying B2C TBE services."⁵³ Although "there is some evidence of 'teething'

⁵⁰ EU Commission Report, footnote 48, p. 83 (citing OECD (2017), *International VAT/GST Guidelines*, note 4, Chapter 3, Part C.3.2).

⁵¹ EU Commission Report, footnote 48, p. 83.

⁵² EU Commission Report, footnote 48, p. 145.

⁵³ EU Commission Report, footnote 48, pp. 97, 103, 146.

problems,...[t]hese concerns do not seem significant”⁵⁴ and should be addressed in the short term. Moreover, they do not undermine the “main conclusion,” shared by both member states and businesses, that “the launch of MOSS has been successful.”⁵⁵ The ensuing paragraphs briefly summarise some of the major factors underlying the EU Commission report’s positive assessment of the EU’s simplified registration and collection regime.

Registrations. The number of businesses registered in the MOSS was about 11 100 in the Union Scheme and slightly below 800 in the Non-Union Scheme in December 2015 and reached 12 899 in the Union Scheme and 1 079 in the Non-Union Scheme by the end of Q2 2016.⁵⁶ Based on available data, the report estimated that roughly 15% of businesses supplying cross-border B2C services are registered for MOSS. The report also estimated that between 60% and 80% of the value of cross-border B2C services was reported through the MOSS, and for purposes of its assessment of the MOSS assumed the correct figure was 70%.⁵⁷

Ease of registration. Businesses’ initial experiences with MOSS in terms of getting registered and reporting were “very positive,” although member states indicated that there had been a learning curve. It was also reported that it was “easy” to register and report to the member states’ MOSS portals.⁵⁸

Information technology (IT) systems. The vast majority of member states agreed that the IT system was working very well and that they had not encountered major technical difficulties with the system.⁵⁹ The view was shared by businesses, which generally found that the national web portals provided the services and support they needed to comply with their tax obligations.⁶⁰

Cost and burdens of simplified regime as compared to traditional regime. The overall cost for business using the MOSS was found to be about 95% lower than for those not using the MOSS, resulting in a total saving of about EUR 500 million.⁶¹ Submission of VAT returns through the MOSS represents by far the most burdensome task, accounting for

⁵⁴ EU Commission Report, footnote 48, pp. 11, 95. See also Commission Report, footnote 48, p. 97 (“businesses noted that there have been minimal difficulties with the MOSS after the challenging and costly implementation of necessary system changes”).

⁵⁵ EU Commission Report, footnote 48, pp. 11, 12.

⁵⁶ EU Commission Report, footnote 48, pp. 14, 131, 139. See Section 1.5.2 for an explanation of the distinction between the Union Scheme and the Non-Union Scheme. The Report also recognises that the number of registered businesses does not reflect the full reality of the uptake of the MOSS as many businesses supplying cross-border e-services are complying through intermediaries (platforms). Some other businesses have opted for a full registration within the EU.

⁵⁷ EU Commission Report, footnote 48, pp. 14, 124.

⁵⁸ EU Commission Report, footnote 48, p. 103.

⁵⁹ EU Commission Report, footnote 48, p. 85.

⁶⁰ EU Commission Report, footnote 48, p. 85.

⁶¹ EU Commission Report, footnote 48, pp. 15, 138.

approximately 98% of total administrative costs related to the use of the MOSS.⁶² MOSS registration accounted for a little over 1% of the cost of compliance and payments accounted for less than 1% of such costs.

Administrative burdens on small and micro-businesses. As noted in the preceding paragraphs, most businesses found that the MOSS functioned well as a reporting tool, mitigating the administrative burden for businesses supplying B2C TBE services. However, for small and micro-businesses even the lower administrative burden can still be a difficult barrier to overcome.⁶³

Experience with declarations and payments. The member states' initial experience with MOSS declarations and payments seems to have been good. At the time of assessment (Q1+Q2 2015), only 1608 late declaration and payment reminders had been issued by member states at the time of assessment. Over half of the member states had not issued any or had issued less than 20 reminders, while six member states noted that they had issued over 100 reminders.⁶⁴ Overall, businesses did not consider the MOSS return/declaration as complex or particularly burdensome although some businesses indicated that they would appreciate an improvement in the functionality of the MOSS.⁶⁵

Concentration of revenues in large businesses. A small number of large businesses accounted for the overwhelming majority of the revenues collected under the Union MOSS. More than 99% of the VAT revenue processed through the Union MOSS was declared by about 13% of the businesses registered under the MOSS.⁶⁶ Thus, 87% of the registrations accounted for less than 1% of the revenue reported.⁶⁷ It is likely that the concentration on the supplies of TBE services from outside the EU under the Non-Union Scheme would have been similar to the levels of concentration experienced within the EU, with the largest 10-15% of suppliers expected to be responsible for nearly 95-99% of the total value of supplies.⁶⁸

Insignificance of large number of small businesses to revenues and implications for adoption of thresholds. In what is essentially a restatement of the point in the preceding paragraph, a large number of small businesses produce a very small percentage of MOSS revenue. In 2015, about 6,500 companies with an annual turnover of less than EUR 10 000 generated EUR 1.1 million – less than 0.5% of the total VAT revenue reported through the MOSS in 2015.⁶⁹ This may constitute an important data point in considering whether the adoption of thresholds may be advisable to avoid imposing administrative burdens on taxpayers and tax administrations that are disproportionate to the revenue involved. See Section 1.6.1 (elaborating on this point). Indeed, the report observed that despite the

⁶² EU Commission Report, footnote 48, p. 15, 121-122, 137.

⁶³ EU Commission Report, footnote 48, p. 12.

⁶⁴ EU Commission Report, footnote 48, p. 90.

⁶⁵ EU Commission Report, footnote 48, p. 150.

⁶⁶ EU Commission Report, footnote 48, pp. 16, 89, 105, 136.

⁶⁷ EU Commission Report, footnote 48, p. 134.

⁶⁸ EU Commission Report, footnote 48, p. 109, 114.

⁶⁹ EU Commission Report, footnote 48, pp. 18, 94.

simplification provided by the MOSS (and the related reduction of the administrative burden), microbusinesses and small businesses still faced challenges in implementing the MOSS regime and that the adoption of a threshold could improve the regime.⁷⁰

Revenue Impact. Nearly all member states expected the revenue impact of using the MOSS (along with the exercise of taxing rights by the jurisdiction of the customer in B2C transactions) to be positive.⁷¹

Compliance in general. With respect to compliance, cooperation, and audit under the simplified regime, although experiences are still very limited and it is too early to draw clear conclusions, it is expected that larger suppliers are generally compliant and non-compliance is more likely to be concentrated among the smallest businesses, partly due to the perceived high administrative burden and also the reduced likelihood of third parties reporting such non-compliance to taxation authorities. In light of the high level of concentration in TBE supplies (in MOSS 13% of suppliers paying 99% of the VAT), the VAT loss due to non-compliance is “likely to be limited”.⁷²

Importance of Communications Strategy to Success of Simplified Regime. The report observed that a comparison of revenues under the pre-2015 VoES regime to the revenues generated by the Non-Union Scheme under the MOSS was a “clear indicator that the communication strategy employed by the Commission and Member States to advise non-EU business of their responsibilities to pay tax in the EU through the MOSS has been successful.”⁷³ The 2014 revenues reported under the VoES were about EUR 140 million whereas the estimates for 2016 indicated revenues of over EUR 500 million, an increase of more than 350%. Indeed, even prior to adoption of the MOSS, increases in VAT revenues from cross-border B2C VoES supplies from non-EU suppliers under the One Stop Shop demonstrated the importance of a communications strategy to the success of a simplified regime. As the report observed: “The reason for this increase is likely not related to an increase in the sales of such services to European customers, but in higher compliance of non-EU businesses. This is likely due to an increased awareness with non-EU businesses prior to 2015 due to the extensive communication activities of the European Commission and Member States. Additionally, since a number of OECD countries moved towards a similar system as the one adopted by the EU on 1 January 2015, on an

⁷⁰ EU Commission Report, footnote 48, p. 19.

⁷¹ EU Commission Report, footnote 48, pp. 16, 139, 151.

⁷² EU Commission Report, footnote 48, pp. 136, 147-148, 151.

⁷³ EU Commission Report, footnote 48, pp. 16, 132. The report’s conclusion regarding the key role of communications strategy was based on the fact that a comparison between VoES 2014 revenues and the Non-Union Scheme 2016 revenues is an “apples-to-apples” comparison, because the MOSS (as applied to non-EU suppliers) was effectively an application of the pre-2015 One Stop Shop (although it broadened the base to include telecommunications and broadcasting services as well as electronic services). See Section 1.5.2. By contrast, comparing pre-2015 revenues from intra-EU supplies to revenues from the Union Scheme MOSS is an “apples-to-oranges” comparison because the pre-2015 rules regarding taxing rights over intra-EU B2C supplies of TBE services were different from the post-2015 rules allocating taxing rights to jurisdictions. See EU Commission Report, footnote 48, p. 127.

international level there may have been more attention for compliance of non-established traders.”⁷⁴

Administrative cooperation with third countries. Both member states and businesses agreed that administrative cooperation with third countries was important for enhancing compliance with the simplified regime for non-EU suppliers and a principal area needing improvement.⁷⁵ The report identified the existing tools available for such administrative cooperation, and they are discussed further below (Section 1.6.1). Although existing multilateral conventions and bilateral treaties for administrative cooperation in the tax area provide a good basis for administrative cooperation between countries with respect to the simplified regime, it was noted that such instruments would need to be used more efficiently to address existing and potential difficulties in implementing the MOSS.⁷⁶

Problems with the simplified regime. The main problems identified in connection with the MOSS are linked to its design and scope, such as the application to TBE services only, without a threshold. The report also identifies specific operational issues, which can be addressed in the medium term, such as the return correction procedure, currency exchange principles, and simplification in payment processes.⁷⁷

Recommendations for operational improvements. The report identified a number of recommendations from member states and from businesses for operational improvements to enhance compliance with the simplified regime including the following:

- Provide more technical assistance to businesses, especially to small and microbusinesses;
- Provide more timely information to businesses on technical specifications to adapt their IT systems;
- Provide more and clearer guidance on the rules for intermediaries and trading through intermediaries;
- Provide specific simplification measures for small and microbusinesses or businesses with limited cross-border trade (e.g., a threshold or use of one piece of evidence);
- Remove the right to require an invoice on cross-border B2C supplies;
- Continue with the inclusive approach on the preparation of the future changes and related guidance aiming for a high level of alignment in the national implementation of the changes;
- Involve businesses in the implementation process from early on for better awareness and preventive management of the potential impact on the administrative burden on businesses, especially on the small and microbusinesses;
- In the communication strategy on upcoming changes, consider using a tailored approach for the small and microbusinesses;

⁷⁴ See EU Commission Report, footnote 48, p. 130.

⁷⁵ EU Commission Report, footnote 48, pp. 18, 94

⁷⁶ EU Commission Report, footnote 48, pp. 109, 114.

⁷⁷ EU Commission Report, footnote 48, pp. 12, 95.

- Prepare comprehensive national guidance on legislative and administrative changes, preferably in cooperation with businesses, and publish it as early as possible.

In addition to the development of a national compliance strategy, the success of such a regime will also depend on strengthened administrative cooperation with other member states (on information exchange as well as on auditing) and significantly also with third countries.⁷⁸

3.3.2. *Other Jurisdictions' Simplified Registration and Collection Regimes*

The US Subnational RST Simplified Registration and Collection Regimes

As of December 2017, of the 45 US states with RSTs, there were 23 full members of SSUTA and one associate member,⁷⁹ and there were 3,777 sellers who had registered under the simplified regime.⁸⁰ There is little publicly available data or other information regarding the success or effectiveness of SSUTA, although it was reported that from 1 October 2005 through to 31 December 2012, \$1.3 billion in sales was collected by retailers registered under SSUTA.⁸¹ The figure reflects all remote sales, including Internet sales. After launching its simplified tax collection initiative,⁸² Alabama enjoyed a surge of tax collections from online sales,⁸³ and as of November 2017, 150 sellers had voluntarily registered to collect Alabama tax.⁸⁴

Other Jurisdictions

For the moment, there is a lack of information regarding other jurisdictions' experience in implementing their simplified registration and collection regimes, which is most likely attributable to the fact that many of these regimes have only recently been implemented.

⁷⁸ EU Commission Report, footnote 48, pp. 152-156.

⁷⁹ Member states are in full compliance with SSUTA and associate members states are in "substantial compliance."

⁸⁰ See http://www.streamlinedsalestax.org/index.php?page=regiatration_3. SSUTA is described in Section 1.4.2.

⁸¹ L. Mahoney, et al., "States See Little Revenue From Online Sales Tax Laws, Keep Pressure on Congress," Bloomberg BNA (Jan. 8, 2014), available at <https://www.bna.com/states-see-little-revenue-from-online-sales-tax-laws-keep-pressure-on-congress>

⁸² The regime is described in Section 1.4.2.

⁸³ M. Cason, "Alabama sees surge in tax collections from online sales," available at http://www.al.com/news/birmingham/index.ssf/2017/01/alabama_sees_surge_in_tax_coll.html

⁸⁴ It may be worth noting that an amendment to the original Alabama legislation specifically authorized the taxing authority to make the list of sellers who voluntarily registered publicly available "so that the consumer can verify a person or a business is currently registered to collect and remit Simplified Sellers Use Tax." Alabama Department of Revenue, "Simplified Seller's Use Tax Report," available at https://www.alabamainteractive.org/ador_report/ssut.do.

4. An Evaluation of the Efficacy of Simplified Registration and Collection Mechanisms When the Taxpayer Is Not Located in the Jurisdiction of Taxation

This section of the report seeks to identify the features of simplified registration and collection mechanisms that appear to support their success in practice from the perspective of taxpayer compliance and revenue collection. It draws on the experience of jurisdictions with such regimes described in Part 3.3. above as well as the OECD's prior work providing guidance on these questions.⁸⁵

4.1. Overarching Considerations

Before identifying the specific design features of simplified registration and collection mechanisms that appear to lead to their success in terms of taxpayer compliance and revenue collection, the report addresses several overarching considerations whose recognition by tax administrations is likely to be significant in determining the ultimate success of the jurisdictions' registration and collection mechanisms.

Limiting compliance obligations to those that are strictly necessary for tax collection and are proportional to revenue at stake

Perhaps the most fundamental principle that should guide efforts to design a successful simplified registration and collection mechanism is that compliance obligations should be limited to those that are strictly necessary for tax collection and are proportional to the revenues at stake. The highest feasible levels of compliance by taxpayers that are not located in the jurisdiction of taxation are likely to be achieved when compliance obligations are limited to those that are essential for the collection of the tax. Similarly, the compliance burdens, both from a taxpayer and a tax administration perspective, should be proportional to the tax revenues at stake. If registration and collection mechanisms are unnecessarily complex or disproportional to the tax revenues at issue, it may lead to non-compliance, excessive costs for the tax administration, and decisions by business to avoid conducting economic activity directed at jurisdictions with such mechanisms.

Diversity in operating environments and business models

Tax administrations operate in widely varying legal, economic, and cultural environments. These differences may influence their capacity to administer registration and collection mechanisms and may likewise influence the capacity and motivation of businesses to comply with such mechanisms. In addition, diversity in business models and arrangements may influence their ability to comply with these regimes. Recognition of and sensitivity to these differences in connection with the design and implementation of registration and collection regimes can substantially influence their probability of success.

⁸⁵ See OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter 3, Parts, C.3.2, C.3.3, C.3.4; , OECD (2017), *Mechanisms for the Effective Collection of VAT/GST Where the Supplier Is Not Located in the Jurisdiction of Taxation*, footnote 7.

Exchange of information and administrative cooperation

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 their registration and collection mechanisms, and in encouraging taxpayers to comply with these regimes and in monitoring levels of compliance. There are a number of existing OECD mechanisms for information exchange and other mutual administrative cooperation, which were identified in the Guidelines⁸⁶ and are likely to be helpful in this undertaking. The principal OECD mechanisms for exchange of information and mutual administrative cooperation include:

- The Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- The OECD Model Tax Convention Article 26 (Information Exchange).
- OECD Model Agreement on Exchange of Information in Tax Matters.

Consultation with the business community

Consultation with the business community is essential for the successful design and implementation of a simplified registration and collection mechanism. While such consultation is generally desirable in designing tax legislation, it is critically important in connection with legislation that applies to business taxpayers over which the jurisdiction may otherwise be seen to have limited enforcement power (e.g., where the taxpayer is not located in the jurisdiction of taxation) and where the success or failure of the regime may turn in large part on ease of compliance.

Proper communications strategy

Just as consultation with the business community is essential to the success of a registration and collection mechanism that depends on ease of compliance, a communications strategy that publicises the mechanism and describes the principal compliance features, emphasising the ease of compliance, is likely to contribute to the success of the regime.

The provision of adequate lead time (i.e., the time between the announcement of the simplified registration and collection regime and its implementation) is necessary both for tax administrations and for taxpayers to allow a smooth transition to the new regime.

Thresholds

In implementing a registration and collection mechanism when the taxpayer is not located in the jurisdiction of taxation, jurisdictions may consider the adoption of a threshold (measured in currency) beneath which the taxpayer is relieved of the obligation to collect and remit tax in the jurisdiction of taxation.⁸⁷ Jurisdictions recognise that imposition of tax registration and collection regimes with respect to taxpayers that are not located in the jurisdiction can impose compliance and administrative burdens on such taxpayers. To avoid imposing burdens that are disproportionate to the revenue involved or to the objective of

⁸⁶ OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter. 4.B.

⁸⁷ The considerations bearing on the appropriate thresholds with respect to the implementation of simplified registration and collection mechanisms as applied to services and intangibles are not necessarily the same as those applicable to the appropriate thresholds, if any, applicable to the import of low-value goods.

achieving neutrality between taxpayers that are and taxpayers that are not located in the jurisdiction, some jurisdictions have adopted thresholds to minimise the risk of disproportionate administrative and compliance costs for businesses and tax administrations.

If a jurisdiction considers the possibility of adopting a threshold in connection with registration-based collection regimes when the taxpayer is not located in the jurisdiction of taxation, it is important that the jurisdiction make every effort to achieve an appropriate balance between the goal of minimising administrative costs and compliance burdens for tax administrations and taxpayers who are not located in the jurisdiction and the need to maintain a level playing field between taxpayers that are located in the jurisdiction and taxpayers that are not located in the jurisdiction.

In seeking to achieve the balance described above in connection with the adoption and implementation of a threshold, jurisdictions are encouraged to take account of the following considerations:

- *Neutrality*, and, in particular, the potential impact of a threshold on the competitive position of taxpayers that are located in the jurisdiction and taxpayers that are not located in the jurisdiction.
- *Simplification*, focusing on the potential reduction in compliance costs for taxpayers not located in the jurisdiction.
- *Impact on the efficiency and effectiveness of tax administration*, notably the possible reduction in costs associated with pursuing the collection of potentially large numbers of small tax payments, although efficiency gains need to be balanced against any increased administrative costs associated with the threshold. In the absence of third party information, it may be difficult to assess whether taxpayers that are not located in the jurisdiction of taxation exceed the threshold. The international administrative co-operation can play an important role in this regard.
- *Determination of the level of the threshold*, including the calculation method.
- *Implementation of anti-abuse measures*, specifically taxpayers' artificial division of their activities among commonly controlled entities to stay below the threshold.
- *Provision of clear guidance*.

4.2. Specific Design Features

The specific design features that are likely to facilitate the success of a simplified registration and compliance regime for taxpayers that are not located in the jurisdiction of taxation have been identified in prior OECD work⁸⁸ and are reflected in jurisdictions' experience described in Part 3.3 above. The following paragraphs briefly summarise these key design features.

Use of electronic processes. It is generally recognised that the simplest and most effective approach to the design of simplified tax registration and collection mechanisms for taxpayers that are not located in the jurisdiction of taxation involves substantial utilisation

⁸⁸ OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter 3, Part C.3.3; *Mechanisms for the Effective Collection of VAT/GST*, footnote 7, Chapter 3, Part C.

of electronic processes.⁸⁹ Indeed, the crucial fact that the taxpayer is not located in the jurisdiction of taxation necessarily complicates reliance on registration and collection procedures that depend on physical documentation, and electronic means for achieving the same objectives offers a natural and attractive alternative to physical documentation.

Simplified registration procedures. Simplified registration procedures can play an essential role in the success of a registration and collection mechanism applicable to taxpayers that are not located in the jurisdiction of taxation. Indeed, since such taxpayers, by definition, are those with respect to which the jurisdiction with the taxing rights may have limited or no authority effectively to enforce a collection or other compliance obligation upon the taxpayer (see Section 1.2. above), making compliance easy has been identified as a critical factor in facilitating compliance because of its influence on the behaviour of taxpayers who are “willing to do the right thing.”

Simplified return procedures. Requirements for filing tax returns differ widely among jurisdictions. Consequently, the compliance burdens imposed on taxpayers that are not located in the jurisdiction of taxation by the obligation to file tax returns (often in multiple jurisdictions) can be substantial. To reduce the compliance burdens on taxpayers that are not located in the jurisdiction of taxation, jurisdictions may consider authorising such taxpayers to file simplified returns. Taxpayers filing simplified returns may be required to forgo certain rights granted to those filing traditional returns, such as the right to specified credits, or the right to refunds (and thus may be denominated “pay-only” regimes).⁹⁰

Payments. In line with the recommendation that jurisdictions utilise electronic processes in the design of their simplified registration and collection regimes (see Section 1.6.2 above), jurisdictions are encouraged to use electronic payment methods, allowing taxpayers to remit the tax due electronically.

Record keeping. Jurisdictions are likewise encouraged to use electronic record keeping systems as business processes have become increasingly automated and paper documents have generally been replaced by documents in an electronic format.

Communications strategy. In fulfilling the overarching consideration that it employ an effective communications strategy, jurisdictions are encouraged to make available online all information necessary to register and comply with the simplified registration and collection regime, preferably in the languages of their major trading partners.

⁸⁹ OECD (2017), *International VAT/GST Guidelines*, footnote 6, para. 3.139; OECD (2017), *Mechanisms for the Effective Collection of VAT/GST*, footnote 7, Chapter 3.C, para. 105.

⁹⁰ OECD (2017), *International VAT/GST Guidelines*, footnote 6, Chapter 3, Part C.3.3.3; *Mechanisms for the Effective Collection of VAT/GST*, footnote 7, Chapter 3, Part C.3.

5. Concluding Observations

The following paragraphs highlight the central conclusions of this report and their implications for the design and implementation of registration and collection regimes for taxpayers that are not located in the jurisdiction of taxation.

The problem considered by this report – how to collect tax from taxpayers that are not located in the jurisdiction of taxation – is a problem encountered by any tax regime where the jurisdiction asserts taxing rights over a tax base but the jurisdiction has limited power to compel the taxpayer to remit the tax. Although the experience of jurisdictions in addressing this problem has involved primarily consumption taxes, that experience (and the lessons that can be learned from it) is applicable as well to other tax regimes that confront the same problem, namely, asserting rights over a tax base where the taxpayer is not located in the jurisdiction of taxation.

There are two principal approaches to addressing the fundamental problem considered in this report. First, the jurisdiction may seek to enlist some other participant involved in the transaction or activity that generates the tax base over which it asserts taxing rights, and over whom it does have enforcement authority, to collect the tax or otherwise satisfy the taxpayer's compliance obligation (e.g., withholding taxes). Second, the jurisdiction may adopt a taxpayer registration and collection mechanism, and, in light of the absence of enforcement authority over the taxpayer, may seek to make compliance sufficiently easy or attractive to induce taxpayers to comply with their tax obligations notwithstanding the limitations on the jurisdiction's power to compel compliance. It is generally recognised that the latter alternative is more appropriate in the B2C context.

Many jurisdictions have implemented (and are in the process of implementing) simplified registration and collection regimes in the B2C context for taxpayers that are not located in the jurisdiction of taxation.

Although the evidence regarding the performance of the simplified regimes adopted by jurisdictions is still quite limited, because these regimes generally have only become operational on a widespread basis recently, the best available evidence at present can be found in the detailed report outlining the experience of the EU (and its 28 member states). In particular, the following conclusions may be drawn from this report:

- Simplified regimes can work well in practice. Notwithstanding the limitations on the jurisdiction's power to compel compliance, in practice the EU experience demonstrates that a high level of compliance can be achieved and substantial levels of revenue can be collected;
- There is a concentration of the overwhelming proportion of the revenues at stake in a relatively small proportion of large businesses;
- Compliance costs for small and micro-businesses are relatively high compared to the proportion of revenues collected from such businesses;
- Adoption of thresholds may be an appropriate solution to avoid imposing a disproportionate administrative burden with respect to the collection of tax from small and micro-businesses in light of the relatively modest amount of revenues at stake;

-
- A good communications strategy is essential to the success of a simplified regime (including appropriate lead time for implementation);
 - The evidence, albeit still limited, supports the conclusion that simplified registration and collection regimes represent an effective approach to securing tax compliance when the taxpayer is not located in the jurisdiction of taxation.

Based on the observations outlined above and recent experience, it is highly likely that an even greater number of jurisdictions will embrace simplified collection regimes in the future, especially in light of the growth of the digital economy and more particularly, B2C digital transactions.