



ONLINE SALES TAX CONSULTATION

Issued 19 May 2022

ICAEW welcomes the opportunity to comment on the Online Sales Tax Consultation published by the government in February 2022, a copy of which is available from this [link](#).

For questions on this response please contact our Tax Faculty at taxfac@icaew.com quoting REP 40/22.

This response of 19 May 2022 has been prepared by the ICAEW Tax Faculty.

Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. ICAEW is concerned that the basis of the consultation appears to be around how to address the imbalance of the costs of business rates borne by those retailers with physical premises versus the lower establishment costs of e-commerce sellers. This appears to be making the debate more even complex when, as a starting point, the policy discussion could focus around how online businesses should be taxed. This would likely facilitate a more holistic look at the tax system and creates less constraints.
2. This concern is exacerbated because there is significant doubt that an online sales tax (OST) would address this imbalance in any event. If landlords were to increase rents following a fall in business rates, some or all of the benefit of any reduction in rates would be passed to the landlord, not the retailers. In such circumstances, an OST would not address the policy objective. Similarly, a large proportion of retail businesses with physical premises also have an online presence. Many are already concerned that any reduction in business rates will not offset an online sales tax, putting some 'bricks and mortar' retailers in a worse position. There is also the wider issue recognised in the consultation that revenue from an OST will likely be small in comparison to the tax generated by business rates. For illustration purposes, we understand the abolition of business rates would require a 3 or 4 percent rise in the VAT rate to cover it.
3. Implementing another tax regime will require significant investment from businesses to meet their compliance requirements. Given HMRC's commitment to an online environment following the MTD initiative, this demand on resources is likely to be high to ensure appropriate reporting and software procedures are in place. HMRC would need to ensure that businesses have clear guidance and enough time to meet their obligations as, without this direction, many will struggle to accurately report an OST. This issue will disproportionately affect smaller businesses that do not have large in-house tax teams.
4. There was consistent feedback from our members that the introduction of an OST should, as far as possible, utilise the existing framework of the VAT system. Many members recommended using the VAT return system and processes to report and collect OST, a system with which many businesses and advisors are already familiar ?
5. It was also widely agreed that any OST would likely be borne by the end consumer in the form of higher prices. Given the unprecedented rise in the cost of living households are facing, an extra tax will be unwelcome and likely to disproportionately affect lower income households.
6. Taking the above points into consideration we do not think that introducing an OST in isolation will address any disparities created by the business rate system while imposing yet more burdens and compliance costs on the retail sector generally. It is our view that, in order to facilitate flexible discussions around any possible solution, the taxation of the digital economy and e-commerce businesses needs considering without reference to the business rates debate.
7. We have not answered all questions contained within the document as we consider a large number require a practical working knowledge of managing an online retail business and this is not an area of expertise for many of our members. We have focused our response on more high-level policy considerations around implementing an OST.

CHAPTER 2 SCOPE

Click and collect

8. Including click and collect within the scope of the tax highlights some of the difficulties in designing an online sales tax. To exempt click and collect entirely is likely to remove a significant chunk of OST revenue as this is an established way for many online shoppers to collect their online purchases. On the other hand, click and collect could be seen merely as a convenient way of undertaking traditional 'bricks and mortar' shopping, with most of the premises costs etc which that entails. Click and collect to shops will encourage footfall but involves extra establishment costs for retailers (albeit perhaps with lower delivery costs overall). However, click and collect is made more complex by many retail outlets now offering collection points for alternative retailers (eg collect plus / ASDA to you). How would all these options be included within the scope? While there is the potential to distinguish between various collection options, this is likely to make the tax even more complex.

Application of the OST to goods and services and digital goods

9. The application of an OST to services will make the regime even more complex and a 'goods only' approach is likely to be less complicated.
10. Where digital goods can be purchased from in-store retail outlets it would appear inequitable to exclude these from any OST.

Defining taxable sales

11. Members thought that wherever possible, definitions should follow those within the existing tax system. The definition of taxable sales could therefore seek to use those within the Value Added Tax Act 1994 (VATA 1994). However, the OST legislation will need to specify what goods and/or services are within the scope of the OST and also what are excluded.

Business to business sales (B2B)

12. Excluding B2B sales would appear sensible approach as this should limit the tax to the 'end-consumer'.
13. Defining the scope of any OST by reference to the use of any goods or services is likely to be very difficult to administer. A generic exclusion of all B2B transactions is likely to be less complex for businesses to manage, especially those with a varied customer base and product range. Some businesses will need to differentiate between B2B and B2C sales for VAT purposes and so making this distinction should not place an undue administration burden on them. However, the nature of the customer may have no effect on the VAT liability and therefore this distinction is not always required. For these businesses, separation of B2B and B2C could prove burdensome.
14. In terms of defining a business, the OST definition should follow the existing tax definitions as far as possible to mitigate any complexity. Consideration should be given as to whether the legislation should define 'retailer'.

Application of the OST to takeaway food

15. Careful consideration should be given as to whether take-away food should be included within the scope of an OST. Factors for excluding it from scope include often low profit margins and central locations which are an expensive cost base. Similarly, take-away is a very competitive market and even small price increases will be difficult to pass on to consumers.

16. Additionally, if an order is made online and the customer must collect that order from the physical premises where the food is prepared, it seems sensible that this sale would be excluded from any OST. Indeed, it would feel at odds with the policy objective to bring this type of transaction into scope which is more akin to a 'bricks and mortar' model of delivery.
17. Many businesses are also recovering from the effect of the pandemic where catering and hospitality were significantly impacted. This includes those traditional restaurants who suffered considerable losses in the pandemic which now offer a take-away option. To place an increased tax burden on the industry as it is recovering may not be advisable.

Exemptions / Reliefs

18. Exemptions and reduced rates apply to certain goods and services from a VAT perspective so it would seem sensible to consider whether such reductions should apply to any OST. However, there are other social policy considerations which may drive online purchases which arguably should be considered rather than simply the nature of goods or services being delivered when considering the scope of any OST (eg remote locations, disability or ill health).
19. There was concern that charities might incur irrecoverable OST if there was no mechanism for recovery or exemption and this is in addition to the costs of irrecoverable VAT which many charities already incur.
20. The current VAT system provides an important relief for charities in the form of a zero rating of sales of goods that have been donated to the charity concerned. Originally the use of this relief would have been generally limited to sales of goods in charity shops, but more recently the volume of sales of donated goods that are made online has been increasing. As the rationale for this relief is that the charity is merely converting gifts in kind into cash rather than engaging in commercial business, consideration should be given as to whether a similar relief should be included in the design of any OST that is introduced.

Value shifting and avoidance

21. HMRC may wish to consider how this has been managed in the context of VAT where relevant examples have been considered. We are aware that opticians, for example, regularly supply partly exempt services and partly standard rated goods.

CHAPTER 3 DESIGN

Where should the tax be levied?

22. It was accepted that it makes administrative sense to levy the tax on vendors. However, irrespective of where it was levied, there was a widespread belief that any OST would be borne by the end consumer in the form of higher prices.
23. We understand there have new rules introduced for VAT and online marketplaces that are currently under review at EU and OECD level. It may be appropriate to await the outcome of these before adding any further burdens on such businesses.

Cross-border

24. We would question whether subjecting only UK customers to an online sales tax is the correct answer and highlights the concern expressed above about whether amalgamating the issues surrounding business rates with taxing e-commerce transactions is helpful in arriving at the optimum solution. In the absence of a global initiative to taxing e-commerce sales, it could be argued that online sales to a global customer base should be caught as

well as UK sales. However, we appreciate that at present, there is a worldwide consensus that indirect taxes apply to the place of consumption and, as such, to apply a different treatment to an OST may discourage international trade and make the UK less competitive.

Allowance or threshold

25. An allowance or threshold would be favoured to enable the exclusion of smaller businesses which would find the extra compliance burden of a new tax regime more onerous than larger entities. While the VAT registration threshold might appear a logical choice, this is a relatively low limit. Thought could be given to whether one of the other VAT thresholds might be more appropriate eg, the cash/annual accounting scheme limit of £1.35m.
26. We agree any allowance should apply to entities under common control. Where appropriate this could apply to a VAT group. Again, existing definitions should be used to make it as simple as possible – for example the companies act definition of common control.

Revenue based or flat rate approach

27. We suspect a flat-rate approach would prejudice suppliers of low value goods and might result in smaller businesses paying disproportionately more OST. Many members were opposed to this approach indicating that it could have an adverse impact on the suppliers of low priced, high volume goods.

Reporting and administration

28. Quarterly reporting may be appropriate assuming sufficient guidance was published from the outset to enable businesses to be compliant. Businesses would also need sufficient time to implement new systems and/or software on the back of this guidance.
29. However, for businesses using the annual accounting scheme for VAT, annual reporting may be easier to manage.

CHAPTER 4 IMPACTS

30. It may be worth considering a review of the structure of business rates, such as higher rates for distribution centres from which deliveries are made directly to consumers. This might be simpler to implement and comply with, although it would still pose the same challenges in that it may not resolve the policy objective and is unlikely to rectify the imbalance. This is particularly true for hybrid retailer who will likely have large distribution centres.
31. As discussed above, we anticipate that any OST would be borne by the 'end-consumer' in the form of higher prices.
32. It is unclear what environmental impact an OST would have and much might depend on the level and design of the tax itself. Our understanding is that environmental change is not the driver behind the tax.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).