



# VAT Digital Toolkit for Latin America and the Caribbean



# **VAT Digital Toolkit for Latin America and the Caribbean**

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# Foreword

This VAT Digital Toolkit for Latin America and the Caribbean (LAC) provides detailed guidance to assist LAC tax authorities in the design and implementation of robust policies for the application of Value Added Taxes (VAT) to digital trade. This Toolkit covers the core components of a comprehensive VAT strategy directed at the main types of digital trade and e-commerce, particularly online sales of services, intangibles and goods to private consumers by foreign businesses and digital platforms that often have no physical presence in their consumers' respective jurisdictions. It provides policy advice to support tax authorities' decision-making and detailed practical guidance and manuals for the legislative design, the administrative implementation and operation, and the enforcement, of VAT digital policies in light of jurisdictions' specific needs and circumstances.

This Toolkit builds on the internationally agreed standards and guidance delivered by the Organisation for Economic Co-operation and Development (OECD), resulting from intense inclusive global policy dialogue with OECD member countries and non-member economies worldwide, and with international organisations and other relevant stakeholders, including the global business community and academia. It incorporates the experience and best practices from tax authorities in jurisdictions that have already successfully implemented these standards. This Toolkit has been developed through an inclusive and collaborative process with the active involvement of LAC tax authorities and regional organisations, to ensure that it takes due account of the specific circumstances, needs and capacities of tax authorities in the LAC region and to ensure that the identified solutions are properly tailored and capable of being implemented.

The development of this VAT Digital Toolkit for the LAC region was led by the OECD in close co-operation with the World Bank Group (WBG). This co-operation is part of a comprehensive partnership between both organisations in the area of VAT, which also includes the development of VAT Digital Toolkits for the Asia-Pacific region and for Africa. The OECD and WBG have a long history of working together in delivering capacity building programmes in the area of taxation and decided to expand this partnership to VAT design and administration, in particular to assist developing countries in addressing the VAT challenges of the digital economy. The Inter-American Center of Tax Administrations (CIAT) and the Inter-American Development Bank (IDB) have contributed considerably as key regional partners in the development of this VAT Digital Toolkit for the LAC region. The partnerships with CIAT and IDB have been crucial in ensuring the active involvement of tax authorities in the LAC region in the development of this work and in ensuring that proper account is taken of the specific regional needs and circumstances.

The purpose of this Toolkit is to provide practical guidance for addressing the VAT challenges of digital trade that can quickly and effectively be implemented at national level by tax authorities within the LAC region. It is not prescriptive, but rather provides advice and guidance on the possible approaches, based on the internationally agreed standards and best practice approaches. The opinions expressed and arguments employed in this Toolkit do not necessarily reflect the official views of the OECD member countries. The Toolkit will be updated as appropriate to reflect the continuously changing digital trade landscape and the evolution of available VAT policy and administration tools and strategies.

This Toolkit is aimed at assisting tax authorities and at supporting capacity building on VAT design and administration, supplementing other initiatives in this field. It is not an end in itself. The OECD, WBG, CIAT and IDB secretariats are available to complement the guidance presented in this Toolkit with tailored assistance to interested jurisdictions.

# Acknowledgements

The development of this VAT Digital Toolkit for Latin America and the Caribbean (LAC) was led by the Organisation for Economic Co-operation and Development (OECD) Centre for Tax Policy and Administration, in close partnership with the World Bank Group (WBG). This close co-operation is part of a comprehensive partnership between the OECD and WBG in the area of VAT, which also includes the delivery of VAT Digital Toolkits for the Asia-Pacific region and for Africa. The WBG's significant contributions to this work include in particular the recruitment of subject-matter experts to provide high-quality expertise across the core aspects of the Toolkit as well as sharing its unique expertise from its long-term experience in delivering capacity-building programmes in the area of taxation. The Inter-American Center of Tax Administrations (CIAT) and the Inter-American Development Bank (IDB) have contributed considerably as key regional partners in the development of this VAT Digital Toolkit for the LAC region, in particular in ensuring the active involvement of tax authorities in the LAC region and in ensuring that proper account is taken of the specific regional needs and circumstances.

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The development of this Toolkit would not have been possible without the invaluable contributions of knowledge, ideas and energy of a small group of leading experts in the field of international VAT policy and administration. They include Marcos Álvarez and José Borja of the Spanish Tax Agency (AEAT), Gary Artuso and Ian Ayrton of the Australian Taxation Office (ATO), Arthur Kerrigan (independent consultant), and Shanae Sherriff of the New Zealand Inland Revenue Department (NZ IRD). The OECD and its partners would like to pay particular tribute to the services and contributions of Professor Walter Hellerstein. In addition to contributing a great wealth of subject matter expertise, he also extensively supported the editing of this whole body of work for publication. The authors are also grateful to Fabiola Annacondia, IBFD, for her numerous contributions of high-quality information and the great many insights that she provided into VAT systems in the LAC region. The partner organisations would finally like to extend their deepest gratitude to AEAT, ATO and NZ IRD for those institutions' wholehearted support of this project and for permitting their staff to contribute substantial time to it in the capacity of independent experts.

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# Abbreviations and acronyms

|                |   |
|----------------|---|
| <b>AAL</b>     | Authentication assurance level  |
| <b>AI</b>      | Artificial intelligence   |
| <b>ALACAT</b>  | Latin American Freight Forwarders Association   |
| <b>API</b>     | Application programming interface   |
| <b>AUD</b>     | Australian Dollar   |
| <b>BASIC</b>   | Behaviours, Analysis, Strategies, Interventions and Change  |
| <b>B2B</b>     | Business-to-business  |
| <b>B2C</b>     | Business-to-consumer  |
| <b>BBD</b>     | Barbadian Dollar  |
| <b>BEPS</b>    | Base erosion and profit shifting  |
| <b>BIAC</b>    | Business and Industry Advisory Committee to the OECD<br><br>N.B. BIAC renamed itself as “Business at OECD” and the Toolkit will primarily use the organisation’s current name except where quoting or citing historical material. |
| <b>BI</b>      | Behavioural insights  |
| <b>BIC</b>     | Bank identification code  |
| <b>BIN</b>     | Bank identification number  |
| <b>BMD</b>     | Bermudian Dollar  |
| <b>BPaaS</b>   | Business process as a service   |
| <b>BZD</b>     | Belizean Dollar   |
| <b>C2C</b>     | Consumer-to-consumer  |
| <b>CARICOM</b> | The Caribbean Community   |
| <b>CDS</b>     | Customs declaration system  |
| <b>CFA</b>     | The OECD’s Committee on Fiscal Affairs  |
| <b>CIAT</b>    | Inter-American Center of Tax Administrations  |
| <b>CLADEC</b>  | Latin American Conference of Express Carriers   |
| <b>CMS</b>     | Content management system   |
| <b>CoE</b>     | Council of Europe   |
| <b>COTS</b>    | Commercial off-the-shelf  |
| <b>CRC</b>     | Costa Rican Colón   |
| <b>DaaS</b>    | Data as a service   |
| <b>EAD</b>     | Electronic advance data [Many jurisdictions and transporter businesses utilise EAD in customs reporting processes]  |

|                     |   |
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| <b>ECJ</b>          | European Court of Justice   |
| <b>EOI</b>          | Exchange of information   |
| <b>ERP</b>          | Enterprise resource planning  |
| <b>EUR</b>          | Euro  |
| <b>GBP</b>          | British Pound Sterling  |
| <b>GST</b>          | Goods and Services Tax  |
| <b>HMTL</b>         | Hypertext Markup Language   |
| <b>HTTP</b>         | Hypertext Transfer Protocol   |
| <b>IaaS</b>         | Infrastructure as a service   |
| <b>ICC</b>          | International Chamber of Commerce   |
| <b>ICT</b>          | Information and communications technology<br><br>N.B. The Toolkit will use this term interchangeably with “IT” (Information Technology) for short |
| <b>IDB</b>          | Inter-American Development Bank   |
| <b>IEC</b>          | International Electrotechnical Commission   |
| <b>IMF</b>          | International Monetary Fund   |
| <b>IMSI</b>         | International mobile subscriber identity  |
| <b>IOSS</b>         | EU Import One-Stop-Shop   |
| <b>IoT</b>          | Internet of Things  |
| <b>IP</b>           | Internet Protocol, e.g. an IP address for a computer or mobile device   |
| <b>ISO</b>          | International Organization for Standardisation  |
| <b>ITMATT</b>       | Item-level attributes [in the context of data exchange about consignments under EAD systems]  |
| <b>IVA</b>          | <i>Impuesto al Valor Agregado</i> (Value Added Tax in Spanish)  |
| <b>KPI</b>          | Key performance indicator   |
| <b>LAC</b>          | Latin America and the Caribbean   |
| <b>MAAC</b>         | Multilateral Convention on Mutual Administrative Assistance in Tax Matters  |
| <b>MAP</b>          | Multilateral agreement procedure  |
| <b>MCC</b>          | Mobile country code   |
| <b>MERCOSUR</b>     | The Southern Common Market. This is a Latin American trade bloc and its full members are Argentina, Brazil, Paraguay and Uruguay                  |
| <b>MLAT</b>         | Mutual Legal Assistance Treaty  |
| <b>MLE</b>          | Multiple location entity  |
| <b>N.D. or n.d.</b> | Not dated. The Toolkit will primarily use this abbreviation when citing a publication, which has no identifiable date of publication.             |
| <b>NIO</b>          | Nicaraguan Córdoba  |

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| <b>NOK</b>              | Norwegian Krone  |
| <b>NORAD</b>            | Norwegian Agency for Development Co-operation  |
| <b>NZD</b>              | New Zealand Dollars  |
| <b>OECD</b>             | Organisation for Economic Co-operation and Development   |
| <b>OSS</b>              | Open source software   |
| <b>Pacific Alliance</b> | A Latin American trade bloc. Its members are Chile, Colombia, Mexico and Peru, which all border the Pacific Ocean. |
| <b>PaaS</b>             | Platform as a service  |
| <b>PE</b>               | Permanent establishment  |
| <b>PII</b>              | Personally identifiable information  |
| <b>PSP</b>              | Payment service provider   |
| <b>QR code</b>          | Quick response code  |
| <b>RFID</b>             | Radio Frequency Identification   |
| <b>RFP</b>              | Request for proposal   |
| <b>RKC</b>              | Revised Kyoto Convention   |
| <b>RPA</b>              | Robotic process automation   |
| <b>RUB</b>              | Russian Ruble  |
| <b>SaaS</b>             | Software as a service  |
| <b>SEC</b>              | United States Securities and Exchange Commission   |
| <b>SECaaS</b>           | Security as a service  |
| <b>SGD</b>              | Singapore Dollar   |
| <b>SIM</b>              | Subscriber identity module   |
| <b>SLA</b>              | Service level agreement  |
| <b>SLE</b>              | Single location entity   |
| <b>SME</b>              | Small- or medium-sized enterprise  |
| <b>SNA</b>              | Social network analysis  |
| <b>SSL/TLS</b>          | Secure sockets layer/Transport layer security  |
| <b>SWIFT</b>            | Society for Worldwide Interbank Financial Telecommunication  |
| <b>TAG</b>              | Technical Advisory Group (specifically the TAG to OECD CFA's WP9)  |
| <b>TCF</b>              | Tax control framework  |
| <b>TFDE</b>             | OECD Task Force on the Digital Economy   |
| <b>TIEA</b>             | Tax Information Exchange Agreements  |
| <b>TTD</b>              | Trinidadian Dollar   |
| <b>UCaaS</b>            | Unified communication as a service   |
| <b>UNCTAD</b>           | United Nations Conference on Trade and Development   |

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| <b>UPU</b>   | Universal Postal Union  |
| <b>URL</b>   | Uniform Resource Locator  |
| <b>USD</b>   | US Dollars <sup>1</sup>   |
| <b>VAT</b>   | Value Added Tax   |
| <b>VIIES</b> | VAT Information Exchange System   |
| <b>VIVI</b>  | Virtual visits  |
| <b>VLANS</b> | Virtual local area networks   |
| <b>VOEC</b>  | VAT on E-Commerce – Norwegian simplified registration and collection regime |
| <b>WBG</b>   | The World Bank Group  |
| <b>WCO</b>   | World Customs Organization  |
| <b>WP9</b>   | OECD CFA's Working Party No. 9 on Consumption Taxes                         |
| <b>WTO</b>   | World Trade Organization  |
| <b>XCD</b>   | Eastern Caribbean Dollar  |
| <b>XML</b>   | Extensible Markup Language  |
| <b>ZAR</b>   | South African Rand  |

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<sup>1</sup> N.B. The exchange rates used to convert national currencies into US Dollars (USD) in this publication are average market rates for 2020 taken from the OECD monetary and financial statistics (<https://data.oecd.org/conversion/exchange-rates.htm>), except for the Singapore Dollar (SGD) where the market rate for 2020 is taken from the IMF's Macroeconomic & Financial Data (<https://data.imf.org/?sk=388dfa60-1d26-4ade-b505-a05a558d9a42>).

# Executive Summary

**Value added tax (VAT) is the largest source of tax revenue on average in Latin America and the Caribbean (LAC), at 27.7% of total tax revenues in 2019.** Revenue from VAT as a percentage of GDP more than doubled for LAC countries on average between 1990 and 2019, from 2.2% of GDP in 1990 to 6.0% in 2019.

**Safeguarding these crucially important VAT revenues in an economy that is being transformed by digitalisation and globalisation is a priority for many governments in the LAC region.** Most jurisdictions that employ a VAT in other regions around the world confront similar challenges. The need for reform, however, may be more urgent in the LAC region, as it is one of the fastest growing e-commerce regions in the world and VAT reform in response to this new economic reality has remained relatively limited.

**The main VAT challenges related to e-commerce are:**

- The strong growth in online sales of services and digital products (applications and “in-app” purchases, streaming of music and on-demand television, gaming, ride-hailing, accommodation rental, etc.), particularly to private consumers, on which no or an inappropriately low amount of VAT is levied in the absence of effective provisions to impose VAT on such supplies under traditional VAT rules; and
- The strong growth in the volume of imports of low-value goods from online sales, on which VAT is not collected effectively under traditional customs procedures and which therefore often enter jurisdictions untaxed. This causes rapidly growing VAT revenue losses and unfair competitive pressure on domestic businesses that cannot compete against the continuously rising volumes of VAT-free online retail sales.

**The LAC region is one of the fastest-growing regions for e-commerce worldwide.** The outbreak of the COVID-19 pandemic has been a key driver in a stronger than expected e-commerce growth in the LAC region. Millions of people opened a bank account, or an online alternative, for the first time in their lives to receive government emergency aid. At the same time, mobile phone ownership and mobile Internet access continued to increase with growing possibilities to shop and to pay online via mobile devices, while consumers in the LAC region have been encouraged to shop online in light of COVID-19 “stay-at-home” restrictions. As a result, it has been estimated that e-commerce will reach 63% penetration of the total population in Latin America in 2022, compared to the 45% penetration at the beginning of 2020, attracting 84 million new consumers. Online trade in goods and in digital products and services are estimated to have grown in the LAC region at the respective rates of 21% and 20%-to-30% year-on-year in 2020. At the same time, however, VAT receipts declined considerably in 2020, particularly during the first half of the year. Although they improved throughout the second half of the year, VAT receipts for the year declined sharply on average compared to 2019.

**The need for action to ensure that VAT is collected efficiently and effectively on the fast-growing volumes of e-commerce sales is high.** Action is required not only to generate the revenues necessary to finance sustainable development and to strengthen the redistributive power of tax policy in the LAC region post-crisis, but also to avoid competitive distortion between online sellers and local “bricks-and-mortar” stores.

**Governments worldwide have recognised that the VAT challenges of the digital economy require a globally coordinated response.** Only such a response will maximise compliance levels at minimal cost, support effective international co-operation in tax administration and enforcement and minimise risks of trade distortion.

**In response, the OECD has delivered a comprehensive internationally agreed policy framework for addressing the VAT challenges of the digital economy, reflecting broad consensus on effective and efficient solutions among tax authorities worldwide.** It results from an intense and inclusive policy dialogue among tax authorities from OECD member countries and non-member economies and key international and regional organisations over the course of several years. The core standards and principles are included in the International VAT/GST Guidelines and in the 2015 Final Report on BEPS Action 1 “Addressing the Tax Challenges of the Digital Economy”. These standards have been complemented with detailed technical guidance on: the design and implementation of mechanisms for the collection of VAT from non-resident online vendors; the VAT treatment of online marketplaces and other digital platforms; the collection of VAT on imports of low-value goods from online sales; and the VAT treatment of the sharing and gig economy. These OECD standards and recommendations have already been implemented in over 70 countries worldwide, including in the Bahamas, Barbados, Chile, Colombia, Costa Rica and Mexico. Results are very positive in terms of VAT revenue collection, compliance levels and reduction of competitive distortions between traditional “bricks-and-mortar” stores and online vendors.

**The OECD policy framework for addressing the VAT challenges of digital trade is based on four main pillars:**

- i. Creating the legal basis for jurisdictions to assert the right to impose VAT on international digital trade. This includes internationally agreed standards for determining the “place of taxation” for online sales of services and digital products by reference to the location of the customer.
- ii. Ensuring the efficient collection of VAT on online sales of goods, services and digital products from foreign vendors through simplified VAT registration and collection mechanisms.
- iii. Boosting the efficiency of VAT collection by requiring digital platform operators, which dominate global digital trade, to collect and remit the VAT on sales carried out through their platforms.
- iv. Enhancing VAT compliance by foreign online vendors through a modern risk-based compliance strategy and robust administrative co-operation.

**This Toolkit provides comprehensive and detailed guidance for the policy design, implementation and operation of a comprehensive VAT strategy targeted at digital trade in the LAC region.** It is based on the internationally agreed OECD policy framework and draws on expertise and best practices from jurisdictions that have already successfully implemented these standards:

- Section 3 of the Toolkit provides detailed analysis of the various components of the recommended policy framework for the application of VAT to digital trade and of the available options for implementing these recommendations into a jurisdiction’s VAT system in the LAC context. It focuses respectively on internationally traded services and intangibles (including digital services and products); on imports of low-value goods from online sales; and on the sharing and gig economy.
- Section 4 of the Toolkit presents detailed guidance on the key issues associated with the administrative and operational implementation of the OECD policy framework for the collection of VAT on international digital trade. This includes the implementation of a simplified compliance regime for foreign online suppliers, the development of an online portal for registration and payment of the VAT and their integration into a tax administration’s existing administrative and IT framework.
- Section 5 of the Toolkit advises policymakers and administrators on the development of audit and risk management strategies to strengthen compliance with measures for the application of VAT to digital trade.

**The core recommendations of the policy framework for the application of VAT to digital trade presented in Section 3 of this Toolkit include in particular:**

- To introduce VAT rules that determine the place of taxation for supplies of services and intangibles to private consumers by reference to the jurisdiction of the consumer's usual residence. This allows a jurisdiction to impose VAT on these supplies, including sales of digital services and digital products, to private consumers in its territory irrespective of whether or not the supplier is located in that jurisdiction.
- To identify clear criteria and indicia for determining and evidencing a consumer's usual residence, by reference to data that are normally available to online suppliers in the normal course of their business (including bank card and/or other payment data, billing address, and IP address).
- To introduce a requirement, for non-resident suppliers of services and intangibles to private consumers, to register and account for the VAT on these supplies in the taxing jurisdiction.
- To enhance and facilitate compliance for these non-resident suppliers by introducing a simplified registration and collection regime that limits obligations to what is strictly necessary for the effective collection of the VAT, supported by online processes.
- To implement a requirement for digital platform operators to collect and remit the VAT on the sales made through their platform by non-resident suppliers. This can be complemented with reporting requirements, including in respect of sharing and gig economy activities, thus creating considerable opportunities for greater visibility of activity in the informal economy.
- To extend this regime to low-value imported goods, requiring non-resident suppliers and/or digital platforms to collect the VAT on these goods when they are sold to private consumers and to remit VAT to the tax authorities in the jurisdiction to which they are imported. This significantly enhances the efficiency of VAT collection by relieving customs authorities of the task of collecting tax at the border and by considerably reducing opportunities for fraud from undervaluation of imports.
- To consider implementing a withholding obligation for financial intermediaries specifically on payments to non-compliant, non-resident suppliers, as a backstop solution and disincentive to non-compliance. This is particularly relevant for LAC jurisdictions, given the widespread use of such VAT withholding regimes.
- To strive for international consistency in designing and administering the above measures to impose and collect VAT on international digital trade. Greater consistency will facilitate compliance for foreign businesses and digital platforms with multi-jurisdictional obligations by greatly reducing the financial costs and administrative burdens of compliance, thus ultimately safeguarding and enhancing revenues for governments.

**The recommendations in Section 4 of this Toolkit, for the design and implementation of the administrative and IT infrastructure to support the VAT policy framework targeted at digital trade, include the following:**

- To sequence the implementation of the reform, focusing first on the collection of VAT on services and intangibles from non-resident online suppliers (including digital services and digital products) and subsequently extending these obligations to VAT on low-value imported goods. VAT reform for imports of goods from online sales is more complex, particularly due to the connection with customs processes.
- To adopt a project-based approach for the development of the operational and IT infrastructure that is necessary to support the implementation of the reform, with an appropriate governance structure to ensure effective project management and project delivery. Section 4 includes a detailed roadmap for project design and implementation.
- To implement an online portal through which non-resident suppliers carry out their key VAT compliance obligations, particularly registration, returns filing and payment of the VAT due. Section

4 provides detailed technical guidance on the design and operation of each of the components of such an online portal, including integration into tax administrations' existing IT infrastructure. It also includes a detailed discussion of the interaction with customs processes, including the approach to ascertaining the "VAT paid" status of low-value goods from online sales at the time of importation.

- To limit the operation of this regime to the collection of VAT, without the availability of input VAT recovery for non-resident suppliers under the simplified compliance regime ("pay-only" regime).
- To consider utilising the open-source software for the implementation of a simplified compliance regime for non-resident suppliers in line with OECD guidance, which the Inter-American Center of Tax Administrations (CIAT) has developed.
- To consult with the international business community from the outset and throughout a jurisdiction's reforms to implement the recommended policy framework for the application of VAT to digital trade.
- To provide appropriate lead-time for implementation to tax administrations and non-resident online suppliers. A lead-time of 6-12 months between adoption of the reform and entry into force is considered appropriate for VAT reform directed at online sales of services and intangibles. A lead-time of 12-18 months is generally considered appropriate for VAT reform targeted at low-value imported goods. Close alignment with the recommended OECD framework can considerably shorten these lead-times, as online businesses and tax administrations can leverage solutions and technology already implemented in jurisdictions that have adopted a similar approach.

**Section 5 of the Toolkit provides in-depth analysis of the main components of a comprehensive risk management strategy to support the effective collection of VAT on digital trade along with recommendations for its implementation. These recommendations include the following:**

- To maximise compliance levels by providing clear instructions to non-resident suppliers on their VAT obligations in the taxing jurisdiction and by communicating them in English and in the language(s) of the jurisdiction's main trading partners in addition to the jurisdiction's local language(s). Online trade is dominated by a relatively limited number of large online vendors and digital platforms that have been found to be largely compliant with obligations under VAT regimes for non-resident suppliers based on OECD guidance. Close alignment with OECD guidance facilitates compliance for online vendors that typically face obligations in multiple jurisdictions, and thus maximises compliance levels and VAT revenues.
- To provide clear guidance in particular on the scope of the VAT regime for non-resident suppliers (including types of services and intangibles in scope; low-value imported goods; business-to-business and/or business-to-consumer specifics); on the determination of the customer's status where this is relevant for the operation of the regime; on indicia and criteria for determining and evidencing the customer's location; and on applicable VAT rate(s) and exemptions.
- To make extensive use of third-party data for identifying the taxpayer population and detecting non-registration, to monitor compliance and to support a risk-based compliance management strategy. This includes data from banks and financial intermediaries; from stakeholders in the goods trade (including postal operators and express couriers); and from the use of "e-discovery solutions" and "Internet scraping" tools (web harvesting and web data extraction).
- To enhance tax administrations' enforcement capacity in respect of VAT compliance by non-resident suppliers by making effective use of the available opportunities for international administrative co-operation. In particular, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters is the most comprehensive multilateral instrument available for all forms of administrative co-operation between jurisdictions in the assessment and collection of taxes, including VAT. This co-operation encompasses exchange of information, including automatic information exchanges, and assistance in the recovery of foreign tax claims.

# 1 Background

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Section 1 of the VAT Digital Toolkit for Latin America and the Caribbean provides an overview of the challenges created by the digital economy for the imposition and collection of VAT on international trade in services, intangibles, and low-value goods, and it summarises the OECD's existing guidance addressed to these questions.

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The Toolkit will utilise short-form names for the main OECD publications that provide standards and guidance for the collection of VAT on international trade. This is primarily to aid brevity of expression when referring to these publications throughout the text. Therefore, reference to:

- **“The Guidelines”** means the OECD’s *International VAT/GST Guidelines* (OECD, 2017<sup>[1]</sup>).
- **“The Collection Mechanisms Report”** means the report on *Mechanisms for the Effective Collection of VAT/GST Where the Supplier Is Not Located in the Jurisdiction of Taxation* (OECD, 2017<sup>[2]</sup>).
- **“The Platforms Report”** means the report on *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales* (OECD, 2019<sup>[3]</sup>).
- **“BEPS Action 1 Report”** means OECD/G20 Base Erosion and Profit Shifting Project: *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report* (OECD, 2015<sup>[4]</sup>).
- **“BEPS Interim Report”** means OECD/G20 Base Erosion and Profit Shifting Project: *Tax Challenges Arising from Digitalisation – Interim Report 2018* (OECD, 2018<sup>[5]</sup>).
- **“The Sharing/Gig Economy Report”** means the report on *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (OECD, 2021<sup>[6]</sup>).

## 1.1. Introduction: the VAT challenges of digital trade

The international tax challenges of the digital economy are widely recognised. Indeed, these challenges dominate the contemporary global dialogue over sound tax policy and its implementation. The growth of the digital economy, which increasingly informs (if it does not define) the broader economy, raises fundamental questions for both direct and indirect tax design and administration. The common theme underlying many of these questions is the ability to conduct economic activity within a jurisdiction without conducting physical activity or having a physical establishment in that jurisdiction.

The international tax challenges of the digital economy comprise questions regarding both the assignment of taxing rights to a jurisdiction and the effective enforcement of those taxing rights in the jurisdiction to which such rights have been assigned. In the indirect tax context, to which this Toolkit is addressed, the principal questions have involved the appropriate design of Value Added Tax (“VAT”) regimes to facilitate the enforcement of taxing rights associated with the widely accepted destination principle for assignment of such rights. The discussion of these questions typically focuses on the enforcement of taxing rights with respect to non-resident suppliers. At the same time, however, level playing field issues vis-à-vis domestic suppliers and deterring their flight to avoid tax may be of equal importance to the enforcement issues associated with non-resident suppliers.

VAT is the largest source of tax revenue on average in Latin America and the Caribbean (LAC), at 27.7% of total tax revenues in 2019. Revenue from VAT as a percentage of GDP more than doubled for LAC countries on average between 1990 and 2019, from 2.2% of GDP in 1990 to 6.0% in 2019. South America had the highest share of VAT revenue within the LAC region at 30.5% on average in 2019, compared with 27.9% in the Caribbean and 24.8% in Central America and Mexico (OECD et al., 2021<sup>[7]</sup>).

Safeguarding these crucially important VAT revenues in an economy that is rapidly being transformed by digitalisation and globalisation, is a priority for many governments in the LAC region. This is not different from most jurisdictions that operate a VAT in other regions around the world. The need for reform may,

however, be more urgent in the LAC region, as it is one of the fastest growing e-commerce regions in the world and VAT reform in response to this new economic reality has remained relatively limited.

Although the responses to the questions that the digital economy poses for VAT regimes with regard to international trade should generally be guided by fundamental principles underlying these regimes, discrete issues concerning implementation of these principles arise in different contexts. These contextual differences include such factors as whether the issue concerns international trade in services and intangibles as distinguished from international trade in goods; whether the issue concerns business-to-consumer (B2C) or business-to-business (B2B) supplies; and whether the issue arises in connection with supplies facilitated by digital platforms.

The balance of this section elaborates upon the issues identified in the preceding paragraphs and presents an overview of the guidance that the OECD has provided in recent years to address these concerns.

## 1.2. The growth of global digital trade

Economic activity across the globe is increasingly being conducted through and transformed by digital technology. The digitalisation of the economy has significantly influenced the way that businesses interact with one another and with individuals in both domestic and international trade. It also creates new business models. The various aspects of these developments are well known and well documented, and for present purposes, we simply highlight some of their key features and implications.

The evolution of information and communications technology (ICT) lies at the heart of the digital economy. It is now easier for businesses to communicate with suppliers, customers, and employees using Internet-based tools, and developments in ICT are also leading to the emergence of new and transformed business models. Ubiquitous (and often increasingly inexpensive) digital devices, connectivity and “smart” technology are bringing significant changes that are profoundly affecting relationships and markets. ICT has become part of the foundational infrastructure for business and society, evidenced in a heavy reliance on efficient and widely accessible online communication networks and services, data, software, and hardware.

Businesses throughout the world are increasingly using the Internet to provide and acquire goods, services, and intangibles and for consumers correspondingly to purchase goods, services, and intangibles through online channels. Indeed, in 2019, 93% of businesses in OECD countries utilised a broadband Internet connection and 70% to 95% of adults had Internet access. These are percentages that in 2021 are no doubt even closer to 100% (OECD, 2020<sup>[8]</sup>). Among the ICT developments that have contributed to the growth of the digital economy are the increasingly universal use of personal computing devices in many societies, along with the advent of innovative integrated packages of hardware and software, such as smartphones, tablets, and connected televisions. These developments have been facilitated by the parallel innovation in telecommunications networks, software applications, uses of data, and the availability of cloud-based services. The rapid evolution of the digital economy has increased the scope, scale, and speed of domestic and international trade, resulting in the substantial growth in the connection of businesses and consumers globally.

## 1.3. Major opportunities for non-resident businesses to make supplies in jurisdictions worldwide without being physically present there

As suggested above, perhaps the single most significant feature of the growth of the global digital economy for VAT design is that it provides an opportunity for foreign businesses to engage in economic activity in a

jurisdiction without engaging in physical activity in that jurisdiction. This feature of the digital economy is virtually definitional. If the digital economy is defined by the ability of businesses to provide value to their customers through ICT, there may be no necessity for the supplier to have a physical presence in the jurisdiction of the customer. Moreover, in addition to wholly digital transactions involving services or intangibles, the increase in online purchases of low-value goods by private consumers from non-resident suppliers with no physical presence in consumers' jurisdictions creates challenges analogous to those involving digitally provided services and intangibles.

In addressing the VAT challenges raised by the possibility for businesses to supply online to customers in a jurisdiction without being physically present there, guidance has distinguished between business-to-consumer (B2C) supplies of services and intangibles (subsection 1.4); B2C supplies of goods (subsection 1.5); and business-to-business (B2B) supplies (subsection 1.6).

#### **1.4. Challenges for the application of VAT to B2C supplies of services and intangibles made by non-resident suppliers**

International trade in B2C supplies of services and intangibles potentially gives rise to all of the key challenges that the digital economy creates for VAT design and administration, and it creates additional challenges of its own. First, although jurisdictions embrace the widely accepted destination principle that allocates taxing rights to the jurisdiction of consumption for VAT purposes, determining the jurisdiction of consumption can raise complex issues and is less straightforward than with respect to international trade in goods, where the destination usually can be identified on the basis of physical flows of tangible products. Second, there is the challenge of collecting the VAT on supplies made by non-resident suppliers to private consumers in a jurisdiction. Tax administrations cannot realistically look to the private consumer to remit VAT on its purchases from non-resident suppliers, even though the private consumer is located in the jurisdiction of taxation. By contrast, tax administrations can generally rely on customer collection and remittance in the B2B context, where the purchaser is a business. Third, because the transaction involves services and intangibles rather than goods, physical border controls are not available as an alternative means for enforcing VAT collection, as they do, at least in some circumstances, with respect to imported goods.

Determining the jurisdiction that has the right to impose VAT on internationally traded B2C supplies of services and intangibles can create practical questions. The generally accepted principle is that the jurisdiction of consumption has the right to impose VAT on internationally traded services and intangibles. This raises the question where a consumer can be presumed to consume a service or intangibles purchased from a non-resident supplier. Before the advent of the global digital economy, the VAT place of taxation for B2C supplies of services was often determined, explicitly or implicitly, by reference to the place where these services were performed and/or the place where the supplier was located. This was appropriate as B2C services were indeed generally consumed where they were performed before technology made the remote delivery of services to private consumers possible via broadcasting, telecommunications, and an ever-growing range of electronic and Internet-based services. Place-of-taxation rules for supplies of services and intangibles that exclusively utilise place of performance and/or supplier location are however ill-suited to a world in which, for example, the service warranty on an individual's personal computer may be fulfilled by a technician who takes digital control of the laptop and resolves the problem through keystrokes performed in another country. Consequently, rules allocating taxing rights associated with international B2C supplies of services and intangibles may need to be adapted to reflect the place of consumption in the digital economy. Such rules should also be designed to assure consistency in related contexts and to facilitate compliance.

Because tax administrations face challenges to enforce VAT collection obligations upon non-resident suppliers or local consumers under existing VAT frameworks, and border controls do not provide an

alternative means for enforcing collection of international trade in services and intangibles, tax administrations must consider other approaches for effective collection. In recognition of this need, a considerable amount of attention has been devoted to this question, resulting in guidance for the effective collection of VAT in this context. This concrete guidance includes the design of mechanisms for the collection of VAT from non-resident suppliers as well as guidance directed specifically at digital platforms, which are playing an increasingly important role in international B2C sales (see subsection 1.8).

### **1.5. Challenges for the collection of VAT on imports of low-value goods purchased online by private consumers from non-resident suppliers**

In theory, the key VAT challenges that the digital economy creates for international trade in B2C supplies of services and intangibles should not arise in connection with the international trade in B2C supplies of goods. However, VAT collection on goods purchased by private consumers from non-resident suppliers poses a number of similar challenges to the collection of VAT on online purchase of services or intangibles by private consumers from non-resident suppliers. First, in both cases, the supplier is often not located in – and therefore is not subject to effective tax enforcement obligations in – the consumer’s jurisdiction. Second, in both cases the tax administration cannot realistically look to the private consumer to comply with the jurisdiction’s VAT remittance obligations. On the other hand, there are significant differences. First, in contrast to international trade in services and intangibles, physical border controls are in principle available as an alternative means for enforcing collection obligations with regard to inbound supplies of goods. The goods may be stopped at the border and assessed for VAT along with customs duties and other taxes. Second, in contrast to the difficulties that may be encountered in determining the place of consumption under the destination principle with respect to the B2C supplies of services and intangibles, there should be no such difficulty in connection with the supply of goods, because the physical destination of the goods clearly identifies that jurisdiction.

Jurisdictions nevertheless confront significant practical challenges in effectively collecting VAT under their traditional collection models with respect to international B2C supplies of low-value goods. These challenges are attributable not only to the enormous growth in domestic consumers’ online purchases of low-value goods from non-resident suppliers, which results in equally enormous quantities of small parcels crossing borders on a daily basis creating considerable pressure for VAT collection by customs authorities under normal customs processes. They are also attributable to the long-standing laws and practices in many countries that for practical reasons relieve imports of low-value goods from VAT. These low-value consignment relief regimes not only require a sufficient level of monitoring to ensure that they are not abused but also lead to increasingly important revenue losses and competitive distortions between taxed domestic supplies and VAT-free imports from online sales.

### **1.6. VAT challenges in international B2B trade**

The challenges of the digital economy for VAT as applied to international B2B supplies sometimes receive less attention than those associated with international B2C digital trade. The explanation may lie in part in the availability of a solution in the B2B context to address the fundamental problem that jurisdictions confront in the B2C context in ensuring the effective collection of the VAT on sales by non-resident suppliers. The solution to this problem in the B2B context is the so-called “reverse charge” (or self-assessment) mechanism, which shifts the liability to pay the VAT from the supplier to the business customer. While this solution is not effective in the B2C context (see subsection 1.4), in the B2B context resident businesses generally can be expected to comply with tax reporting and collection obligations. Accordingly, when the reverse-charge mechanism is consistent with the overall design of the national tax system, it offers an effective approach to enforcement of VAT on international B2B supplies and relieves

non-resident suppliers of the requirement to be identified for VAT or to account for tax in the jurisdictions to which they sell to business customers. Even if the customer in an international B2B supply is the person primarily liable for VAT, jurisdictions may consider imposing joint and several liability on the supplier and the customer, an option that may also be considered in the B2C context.

## 1.7. OECD guidance and recommendations on the VAT challenges of the digital economy: outline of prior OECD work

The OECD has been engaged in addressing the VAT challenges of the digital economy for more than two decades. The first tangible output of the OECD's work in this area originated in the 1998 Ottawa Conference on electronic commerce with the endorsement of the *Ottawa Taxation Framework Conditions*, which set out broad policy principles for the application of VAT to electronic commerce. In this connection, the OECD's Committee on Fiscal Affairs ("CFA") embraced in its post-Ottawa agenda specific goals with respect to consumption taxes, including agreement on international standards for the consistent determination of the place of taxation for VAT purposes and the development of options for ensuring the effective administration and collection of VAT as electronic commerce continued to evolve.

In the years following the Ottawa Conference, the CFA, working through its subsidiary bodies, notably Working Party No. 9 on Consumption Taxes (WP9), in close consultation with the business community through the Technical Advisory Group to WP9 (TAG), has developed a substantial body of guidance directed at the VAT challenges of the digital economy. In addition, in connection with the OECD's 2013 Action Plan on Base Erosion and Profit Shifting (BEPS), the OECD/G20 inclusive framework on BEPS has produced substantial guidance in recent years with respect to Action 1, "Addressing the Tax Challenges of the Digital Economy". This includes the question of "how to ensure the effective collection of VAT/GST with respect to the cross-border supply of digital goods and services".

The balance of Section 1 very briefly summarises the standards and guidance reflected in the principal OECD publications addressed in whole or in part to the VAT challenges of the digital economy. Section 3 explores this guidance through more comprehensive summaries and analysis. These publications are:

- OECD (2015), **Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report**, OECD/G20 Base Erosion and Profit Shifting Project ("The BEPS Action 1 Report") (OECD, 2015<sup>[4]</sup>).
- OECD (2017), **International VAT/GST Guidelines** ("The Guidelines") (OECD, 2017<sup>[11]</sup>).
- OECD (2017), **Mechanisms for the Effective Collection of VAT/GST Where the Supplier Is Not Located in the Jurisdiction of Taxation** ("The Collection Mechanisms Report") (OECD, 2017<sup>[2]</sup>).
- OECD (2018), **OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS** ("The BEPS Interim Report") (OECD, 2018<sup>[5]</sup>).
- OECD (2019), **The Role of Digital Platforms in the Collection of VAT/GST on Online Sales** ("The Platforms Report") (OECD, 2019<sup>[3]</sup>).
- OECD (2020), **The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration** ("The Sharing/Gig Economy Report") (OECD, 2021<sup>[6]</sup>).

In considering the ensuing summaries both here in Section 1 and in Section 3, one should keep in mind that the publications do not constitute airtight and mutually exclusive examinations of the issues they address. To the contrary, there is a considerable amount of overlap, much of it explicit, in the cited publications in their analysis of, and recommendations, regarding these issues. This is attributable not only to the fact that the publications are addressing common or related issues, but also to the evolution in the

thinking with regard to the specific issues addressed. Indeed, in many respects, all of the publications may be viewed holistically as addressing a common “moving target,” although often with a focus on a particular issue (e.g. services and intangibles, low-value goods, simplified tax compliance mechanisms, digital platforms, etc.). The ensuing summary attempts to avoid unnecessary repetition by omitting descriptions of issues that are addressed in the publication under consideration but that have already been described or that will be described in connection with the discussion of another publication that considers the same issues.

## 1.8. Recapping the fundamental recommendations of OECD guidance

### 1.8.1. *The Guidelines*

The Guidelines provide specific recommendations for legislation to ensure the consistent determination of the place of taxation of internationally traded services and intangibles and to effectuate the effective collection of VAT on these supplies. The Toolkit summarises the key features of the Guidelines in greater detail at subsection 3A.2 and Annex A. The recommendations are designed to implement the destination principle by assigning taxing rights to the jurisdiction of consumption and to reflect principles of VAT neutrality. For B2C supplies, the Guidelines recommend a place-of-performance rule for determining the place of taxation for “on the spot” supplies and a rule based on the customer’s usual residence as the place of taxation for other B2C supplies of services and intangibles. For B2B supplies, the Guidelines recommend a customer location rule for determining the place of taxation, and they provide detailed guidance on application of this rule in circumstances in which the customer has establishments in more than one jurisdiction. The Guidelines also provide a specific rule for international supplies of services and intangibles directly connected with immovable property, namely, the jurisdiction in which the property is located.

In addition, the Guidelines provide guidance with respect to the collection of VAT in the international B2C context (explicated in more detail in the Collection Mechanisms Report described below) and in the international B2B context, where the “reverse charge” or self-assessment mechanism is recommended when it is consistent with the design of the national consumption tax system. The Guidelines offer additional guidance on the adoption of mechanisms to support the Guidelines in practice, including utilisation of existing mechanisms for mutual co-operation and assistance, and information exchange, between jurisdictions.

### 1.8.2. *The Collection Mechanisms Report*

The Collection Mechanisms Report provides guidance for jurisdictions in addressing the effective collection of VAT on supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation, i.e. foreign suppliers upon whom the jurisdiction of taxation may have limited authority to enforce a collection obligation. The Toolkit summarises the key features of the Collection Mechanisms Report in greater detail at subsection 3A.3. While the Guidelines generally recommend the “reverse charge” mechanism, which imposes the VAT collection and remittance obligation upon the customer in the B2B context, it is recognised that this is not usually a viable option in the B2C context. Accordingly, in accord with the Guidelines and related OECD guidance, the Collection Mechanisms Report generally recommends the implementation of a requirement for non-resident suppliers to register in the taxing jurisdiction and remit the VAT on supplies of services and intangibles to consumers there. It recommends the adoption of a simplified registration and collection regime (“simplified compliance” regime in short) to facilitate compliance with VAT obligations for non-resident suppliers in the B2C context.

While acknowledging that there is no one-size-fits-all approach to simplified compliance regimes for collecting VAT from non-resident suppliers, the Collection Mechanisms Report reiterates and elaborates

upon the guidance in the Guidelines, providing a detailed examination of the policy considerations informing the design of such a simplified compliance regime and a description of the main features of such a regime. The policy considerations include the scope of the simplified compliance regime (broad or targeted) as well as questions bearing on all registration-based collection regimes (such as thresholds and the role of third-party service providers). The Guidelines and Collection Mechanisms Report identify (and explore in detail) the following features of a simplified compliance regime: registration procedures; input tax recovery procedures; return procedures; payments; record-keeping; communications strategy; regularisation of suppliers; and adequate lead-time. A key objective of a simplified compliance regime is to encourage compliance by reducing the level of administrative burden for businesses associated with these different features as compared to the corresponding burden of full registration under a traditional VAT regime.

### **1.8.3. The Platforms Report**

The Platforms Report provides guidance for the implementation of robust measures to enlist digital platforms in the collection of VAT on online sales of both services/intangibles and goods. The Toolkit summarises the key features of the Platforms Report in greater detail at subsection 3A.4.

In particular, the Platforms Report focuses on the designation of the digital platform as the legal supplier for VAT liability purposes (full VAT liability regime) and the implications of such a regime for other participants in the supply and the VAT collection process. The report considers the functional criteria and other factors relevant to determining whether digital platforms could be subject to a full liability regime; relevant information needs for platforms operating under such a regime; and VAT collection and payment processes under such a regime. In connection with online sales involving the importation of low-value goods, the report addresses the additional design considerations raised by the operation of the full VAT liability regime for such sales. The report also considers other roles for digital platforms to support collection of VAT on online sales (information sharing, education of suppliers, etc.) and supporting measures for efficient and effective collection of VAT on online sales.

### **1.8.4. The BEPS Action 1 and Interim Reports in relation to imports of low-value goods**

Although the Guidelines and the Collection Mechanisms Report focused on the tax challenges of the digital economy associated with international supplies of services and intangibles, OECD guidance has also recognised the VAT challenges of the digital economy associated with the international supply of low-value goods. The Toolkit outlines the OECD recommended policy framework for imposing and collecting VAT on these supplies in Section 3B. In particular, the BEPS Action 1 Report (2015) considers these challenges and jurisdictions' potential responses to such challenges. As noted above, the Platforms Report provides detailed guidance on measures to enlist digital platforms in the effective collection of VAT on imported low-value goods that are supplied by foreign businesses to private consumers in the jurisdiction of importation.

### **1.8.5. The Sharing/Gig Economy Report**

The Sharing/Gig Economy Report provides comprehensive analysis and guidance to assist tax authorities in designing and implementing an effective VAT policy response to the growth of the sharing and gig economy (also known as “collaborative economy”). It analyses the key features of the sharing and gig economy, its main business models; identifies the associated VAT challenges and opportunities; and presents a range of possible measures and approaches to support an effective policy response in this area. The report is complemented with an in-depth analysis of the business models in the currently dominant sharing and gig economy sectors of accommodation and transportation.

Building on the analysis and guidance provided by the report, Section 3C of the Toolkit provides an overview of the core components of a comprehensive VAT policy strategy for tax authorities in the LAC

region to consider in response to the growth of the sharing and gig economy, taking into account their own national circumstances and policy priorities. It notably highlights the considerable role that digital platforms can play in facilitating and enhancing VAT compliance in the sharing and gig economy, including in formalising informal economy activity, through data-sharing and/or VAT collection in respect of the sharing and gig economy activities that they facilitate.

# 2 Key trends in digital trade that are relevant for VAT policy and administration

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Section 2 of the VAT Digital Toolkit for Latin America and the Caribbean provides general insights into the strong growth of international digital trade in recent years. This growth has created challenges as well as opportunities for VAT policy and administration.

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## 2.1. Introduction

Increasing digitalisation has changed, and continues to change, the commercial dynamics of international trade, including through the emergence of new business models. This section presents a high-level overview of the different dynamics of international digital trade that present not only VAT challenges but also opportunities for enhanced revenue mobilisation.

For the purposes of this analysis, the term “digital trade” is used to encompass a broad range of digitally enabled supplies of services, intangibles and physical goods that can be either digitally or physically delivered, involving both private individuals and businesses.

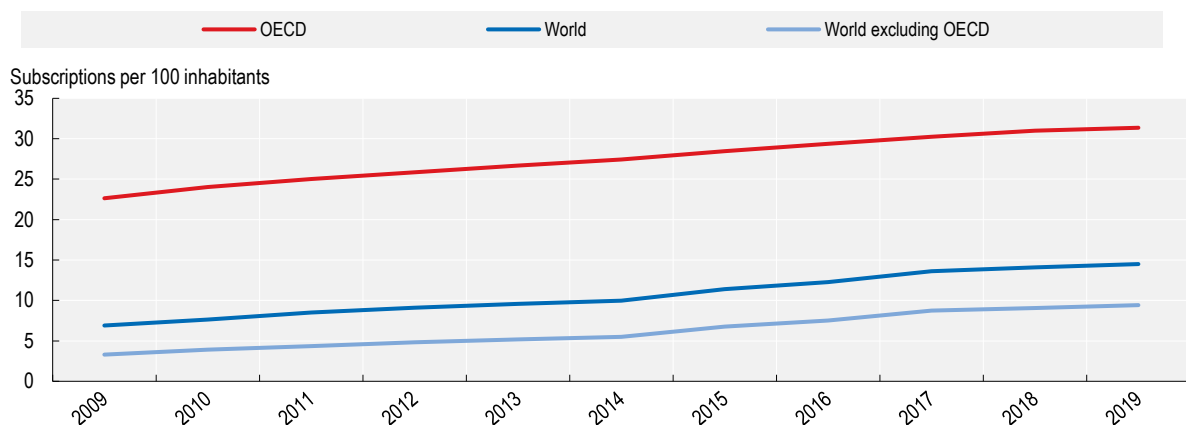
## 2.2. The rapid advancement of information and communication technology (ICT) in the last three decades has created the foundation for digital trade growth

### 2.2.1. Increased Internet connectivity worldwide, including in Latin America and the Caribbean (LAC)

Over the past three decades, the increasingly widespread availability of Internet access has fuelled the digital transformation of the economy and society. Today, more than half of the world’s population is connected to the Internet, compared to only 4% in 1995 (OECD, 2019<sup>[9]</sup>). In 2019, in OECD countries, 70% to 95% of adults used the Internet and 93% of enterprises had a broadband connection (OECD, 2020<sup>[8]</sup>).

Fixed broadband penetration has steadily increased over the 2009-2019 period both in the OECD member countries and worldwide (see Figure 2.1). In terms of trends in connection paths, fibre subscriptions continue to rise, catching up with the number of standard fixed telephone lines. Mobile connections are also growing fast as smartphones become the favoured device for Internet access, with the share of mobile broadband connections increasing from 31% to almost 85% over 2009-2018 in OECD member countries (see Figure 2.2).

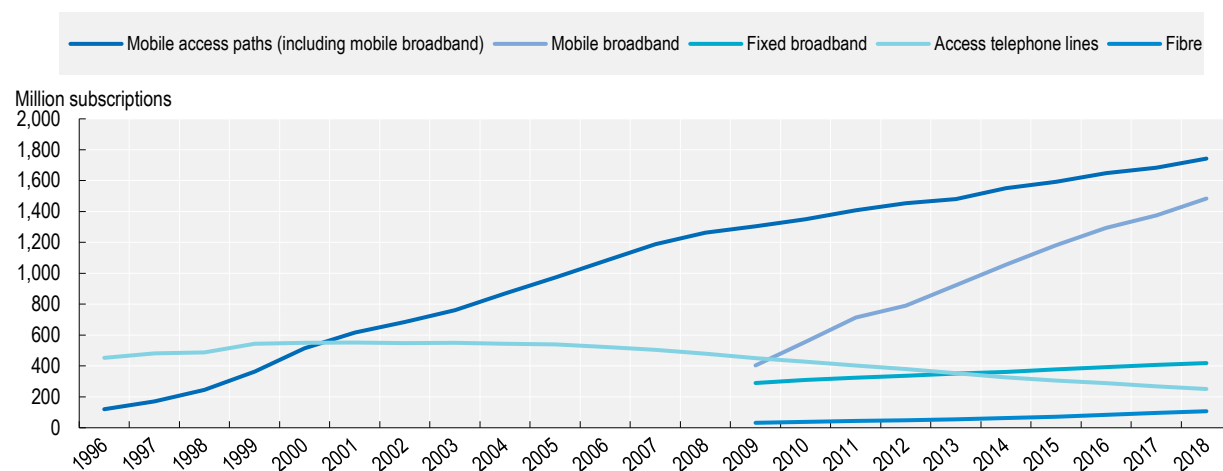
Figure 2.1. Fixed broadband evolution, OECD member countries and world, 2009-19



Note: For 2019, data refer to Q2.

Source: OECD Digital Economy Outlook 2020, (OECD, 2020<sup>[8]</sup>).

Figure 2.2. Trends in communications access paths in OECD member countries, 1996-2018



Source: OECD (2020), *Digital Economy Outlook 2020* (OECD, 2020<sub>[8]</sub>).

The growth of mobile broadband penetration is high in OECD partner economies<sup>2</sup> as mobile broadband fills a connectivity gap due to relatively low levels of fixed broadband infrastructure (OECD, 2020<sub>[8]</sub>).

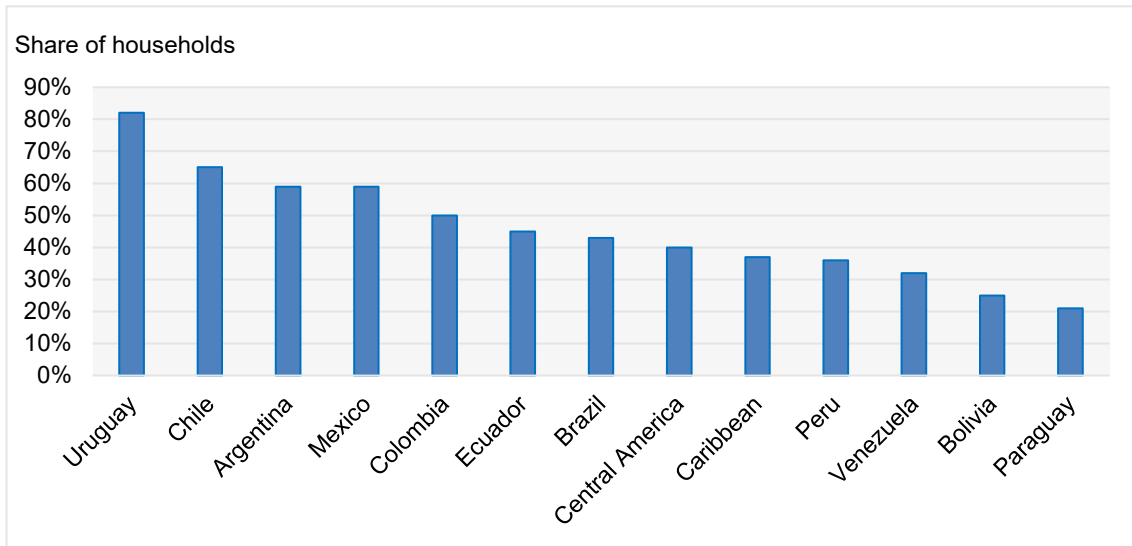
A similar trend of increasing Internet connectivity is apparent in Latin America and the Caribbean (LAC)<sup>3</sup> although a relatively significant coverage gap still exists in certain countries (see Figure 2.3). Consistent with developments in OECD and partner economies, mobile broadband plays an important role in facilitating digital inclusion in the LAC region with unique subscriber penetration (mobile usage on a per-person basis) reaching 68% in 2019 (GSMA Intelligence, 2019<sub>[10]</sub>).

Mobile penetration levels also vary across the LAC region, with Argentina, Chile and Uruguay reaching mobile penetration above 90% while the Dominican Republic, Guatemala, Honduras and Nicaragua and currently sit below the regional average of 70% and Brazil, Colombia, Mexico and Paraguay having rates near the regional average (GSMA Intelligence, 2019<sub>[10]</sub>). As mobile device ownership increases (particularly, smartphones), however, the countries that have not yet reached a saturation level are expected to witness further substantial growth, with a unique mobile subscriber level projected to reach 73% of the region's total population by 2025 (GSMA Intelligence, 2019<sub>[10]</sub>).

<sup>2</sup> These include the OECD's partner economies that responded to the 2019 OECD Digital Economy Policy questionnaire on national digital strategies and policies. They are Brazil, Costa Rica, the Russian Federation, Singapore and Thailand.

<sup>3</sup> LAC in this context refers to a large and diverse geographical region with a more than 600 million population as of 2019. The jurisdictions of the LAC region include the 26 LAC members of the IDB (Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela).

Figure 2.3. Fixed-line broadband penetration rate in selected countries in LAC (2019)



Source: Statista (2020), *Fixed-line broadband penetration rate in selected countries in Latin America in 2019* (Statista, 2020<sup>[11]</sup>).

### 2.2.2. Increased Internet connectivity changing the landscape of international trade

The widespread access to and use of the Internet has changed, and continues to change, various aspects of our daily lives: the way people communicate and interact; how products and services are developed, delivered and consumed; and how businesses operate and interact with each other. Increased connectivity, combined with advancement of technology (ICT) has made it easier for individuals and businesses, particularly small and medium-sized enterprises (SMEs) to reach global markets with lower costs, improving flexibility and efficiency and opening up new opportunities for international trade. Consumers have also improved access to wider product and service choice with more convenient channels for product and service delivery.

As the costs of ICT continue to fall, technology has become central to the operating models of businesses from small start-ups to multinational enterprises (MNEs) across different sectors of the economy. This has given rise to the emergence of new digital business models and the development of new products and services (see Section 2.5 below for a description of prominent business models in the digital economy). In order to better understand the transformative effects of digitalisation on business operations and processes in general, Box 2.1 below provides a summary of relevant features that have been identified as “vectors” of digital transformation. These features have been identified as key criteria in the context of establishing a framework to test the efficacy of existing public policy design in the digital era (OECD, 2019<sup>[12]</sup>).

### Box 2.1. Key features of the digital economy that are transforming the economy and society

- *Scale without mass*: the low marginal cost of many digital products allows firms to scale quickly and globally, more easily than with physical products.
- *Panoramic scope*: the digitalisation of functions enables firms to gain a very wide scope through the ability to combine, process and integrate digital resources within and across different products and at a global level (e.g. a large digital platform offering a wide range of products, far beyond the ability of most traditional retailers).
- *Intangible capital and new forms of value creation*: data flows, algorithms and digital platforms facilitate the development of the service potential of capital goods and enable value creation that is increasingly decoupled from any specific location.
- *Transformation of space*: the possibility to move intangible digital value across the global Internet undermines conventional constraints of location, distance, and jurisdiction and changes the role that location used to play for production, trade and consumption. Products and services can be consumed on various devices or location at any point in time while businesses can influence a particular jurisdiction's economic life without having a physical presence.
- *Platforms and ecosystems*: digital intermediation, for example in social networks, content distribution, or search and storage, leads often to the centralisation of flows, access to, and control of data, which in turn can become a strategic asset and competitive advantage, consolidating dominant position of certain large platforms in a given sector of the economy.

Source: OECD (2019), *Vectors of digital transformation*, OECD Digital Economy Papers, No. 273 (OECD, 2019<sup>[12]</sup>).

### 2.2.3. Further innovation and transformation expected over the coming decade

The rapid technological progress is further changing the business ecosystem as businesses are adopting and integrating new technologies for more efficient management of production and delivery processes and for responding to changes in consumer preferences. While acknowledging that it is difficult to predict future developments with any degree of certainty, Box 2.2 below lists some of the potentially relevant digital developments during the years to come.

### Box 2.2. Emerging trends and potential developments in digital transformation

- *Internet of Things (IoT)*: Internet of Things (IoT) refers to a network of Internet-connected devices or objects such as sensors, meters, radio frequency identification (RFID) chips and other tools that collect, send and receive information. Machine-to-machine (M2M) communication enables the collection of vast amounts of data (a key source of big data) that are stored in remote data servers in the cloud. It has wide applications, including automated inventory management using sensors, RFID tagging of goods and improved tracking of goods. The global IoT market is projected to grow significantly, generating approximately USD 1.5 trillion by 2025. It is also estimated that by 2025, an average connected person will interact with IoT devices nearly 4 900 times a day, which is equivalent to one interaction every 18 seconds.
- *3D printing*: 3D printing can potentially transform the manufacturing processes, moving it closer to consumers, with consumers impacting the design of product features. It could also shift the focus from mass production of standardised products to a shorter product lifecycle for more bespoke output. As 3D printing reduces the steps involved in the traditional manufacturing process (production, transportation, assembly, and distribution), it offers new business opportunities for developing economies as well. With further advancement of 3D printing technology and widespread use across industries, it is conceivable that instead of assembling products themselves, some manufacturers could license plans and specifications to retailers or third parties to “print” the products on demand. Consumers may also be able to assemble products by themselves using 3D printing, opening up the possibility of locating business operations to places that are physically remote from the final consumer.
- *Advanced robotics*: advanced robotics technology is increasingly used in manufacturing, making factories less labour intensive. Increased use of robots also offers opportunities for some multinational enterprises (MNEs) that had previously moved manufacturing offshore to take advantage of lower labour costs to “reshore” manufacturing activities back to where most of their consumers are located. In the future, combined with artificial intelligence and cognitive computing developments, robots may be widely used across broader sectors of the economy, beyond manufacturing, potentially improving productivity, helping lower prices for consumers, and contributing to scaling up operations at a global level.
- *Artificial intelligence (AI) and data analytics*: AI technologies are widely applied across different sectors of the economy. AI, including machine learning, uses algorithms to analyse large amounts of data and generates insights and predicts behaviour (e.g., AI used to provide product recommendation to a specific consumer based on the consumer’s online search history and past purchases). Developments in AI are also closely related to another key technology – data analytics (often called “big data”) that refers to the increased capacity to analyse and process massive amounts of data. Increasingly, cloud service providers are integrating AI and data analytics capabilities – large amounts of data stored in cloud data centres could be used to improve AI outputs and data analytics – to extend their cloud computing capabilities beyond traditional fields.
- *Blockchain*: blockchains are digital ledgers that use decentralised networks to allow two or more parties to engage in reliable transactions without any intermediaries or central authority. The best-known application of this technology is cryptocurrencies but it is relevant for many other domains, including its potential for streamlining supply chains in online trade in the physical goods context (e.g., use of blockchains to track shipments, to record virtual signatures by customs authorities on international shipments, etc.) and its potential application in the tax administration such as VAT management and payment.

Source: OECD (2015), *The BEPS Action 1 Report* (OECD, 2015<sup>[4]</sup>); UNCTAD (2019), *Digital Economy Report 2019* (UNCTAD, 2019<sup>[13]</sup>); CIAT, *BLOCKCHAIN: Concepts and potential applications in the tax area* (Seco, n.d.<sup>[14]</sup>) and other publicly available information.

## 2.3. The economic geography of digital trade, worldwide and in the LAC region

### 2.3.1. Global overview

Digital trade includes a wide range of activities, products and services. It is therefore difficult to delineate its scope to measure its exact size. Despite inherent limitations and challenges, the available data from public as well as private sector sources provide useful estimates of the continuously growing importance of digital trade. Global e-commerce sales have recently been estimated at USD 26.7 trillion in 2019, up 4% from 2018 (UNCTAD, 2021<sub>[15]</sub>). This includes business-to-business (B2B) and business-to-consumer (B2C) sales and is equivalent to 30% of global gross domestic product (GDP) that year. The value of global B2B e-commerce in 2019 has been estimated at USD 21.8 trillion, representing 82% of all e-commerce (UNCTAD, 2021<sub>[15]</sub>). B2C e-commerce sales were estimated at USD 4.9 trillion in 2019, up 11% over 2018 (UNCTAD, 2021<sub>[15]</sub>). International B2C e-commerce amounted to some USD 440 billion in 2019, an increase of 9% over 2018 (UNCTAD, 2021<sub>[15]</sub>). The share of online shoppers making international cross-border purchases has been estimated to rise from 20% in 2017 to 25% in 2019 (UNCTAD, 2021<sub>[15]</sub>). In 2019, 1.48 billion people, or a little over one quarter of the world's population aged 15 and older, made purchases online (UNCTAD, 2021<sub>[15]</sub>). This is 7% higher than in 2018. This has been estimated to grow to 2.14 billion online consumers by 2021 (Statista, 2020<sub>[16]</sub>).

The volume of digital trade is likely to continue to grow rapidly in the near and long term. Increasing Internet penetration worldwide through the rising use of personal digital devices (smartphones and tablets) is an important driver to the strong future growth of digital trade. In 2020, approximately half of the world's population is using mobile Internet (4 billion mobile Internet subscribers) and smartphone adoption is expected to reach 75% of the world's population by 2022 (GSMA Intelligence, 2020<sub>[17]</sub>).

In the context of online trade in physical goods, both online and traditional “bricks-and-mortar” retailers are increasingly offering hybrid online/offline services such as in-store pickup and returns for online purchases, further blurring the distinction between the online and the traditional economies. Online and offline retailers are also investing heavily in their supply and delivery chain infrastructure to reduce delivery times and improve customer services, which makes it easier and more convenient for customers to shop online. In addition, particularly in light of the COVID-19 pandemic, customers are becoming more accustomed to and comfortable with purchasing items online, including large items that they traditionally preferred to purchase in-store. It has been estimated that online retail sales as a share of total retail sales increased by three percentage points in 2020 (from 16% to 19%) compared to a two-percentage point rise between 2018 and 2019 (UNCTAD, 2021<sub>[15]</sub>). Notably, COVID-19 generated an increase in demand for online ordering of physical goods due to quarantine restrictions imposed in many countries (UNCTAD, 2021<sub>[15]</sub>).

Combined with improved logistics and changing social trends, the wider availability of technology-enabled payment solutions (including mobile payments) is further driving the growth of global digital trade. Notably, innovations in financial technologies and the emergence of different payment solutions are expanding the financial inclusion of those who have not previously had access to the traditional financial system, opening up more opportunities for them to engage in digital trade.

### 2.3.2. Strong e-commerce growth in the LAC region

LAC is one of the fastest-growing digital trade regions worldwide. In 2019, more than one third of the region's population was estimated to have shopped online and sales were projected to grow 21.3% to reach USD 71.34 billion (eMarketer, 2019<sub>[18]</sub>). The online trade in physical goods in the region is expected to reach approximately USD 116 billion by 2023 (Statista, 2020<sub>[19]</sub>).

On a regional level, Brazil is the largest single commercial market, accounting for approximately 32.5% of B2C digital trade in the region, followed by Mexico (28.8%), Argentina (8.5%), Colombia (8.3%), Chile (8%) and Peru (4.5%) in 2020 (eMarketer, 2021<sub>[20]</sub>). The outbreak of the COVID-19 pandemic has boosted

digital trade in the region, since more consumers have turned to online channels as a potentially more sanitary means to make purchases and payments (see Figure 2.4). For instance, Peru has recently seen 900% growth of online sales, 500% in Mexico and 230% growth on average across the region (Statista, 2020<sup>[21]</sup>). Although the international share of digital trade, particularly online trade in physical goods, has decreased in 2020 due to the impact of COVID-19, full recovery is expected by 2023 (see Figure 2.5).

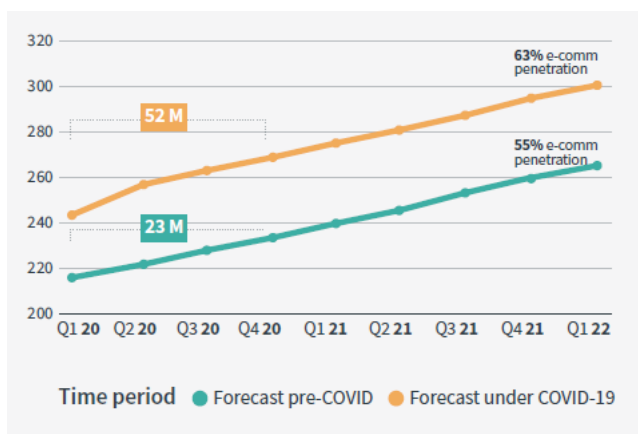
Another change that the COVID-19 pandemic has brought to the region is the increased digitalisation and financial inclusion of people who have gained access to their first bank account to receive the government aid that has been distributed to mitigate the effects of the pandemic. For example, in Brazil, one third to 40% of the beneficiaries of the emergency aid did not have a bank account before the pandemic (EBANX, 2020<sup>[22]</sup>).

The growth of digital trade, driven by greater digital and financial inclusion in the region is likely to continue even after the pandemic, with 63% of the region's population expected to engage in digital trade by 2022, compared to 45% at the beginning of 2020 adding 84 million new digital consumers (EBANX, 2020<sup>[22]</sup>).

In addition to increased connectivity and access to financial services, another driving factor relates to the enthusiasm of consumers in LAC for social media and other online engagement. According to a report based on data for the first quarter of 2020, the region's rate of engagement with regular digital applications is the highest in the world, which could potentially lead to an increasingly high consumption of digital products and services (GSMA Intelligence, 2020<sup>[23]</sup>).

On a sectoral basis, trade in both physical goods and in digital products and services is growing fast in the LAC region at respectively 21% and 20%-to-30% year-on-year in 2020 (EBANX, 2020<sup>[22]</sup>). Key segments that are likely to drive the growth of digital trade after COVID-19 include delivery apps (including grocery delivery), music/video streaming, consumption of online content and online gaming. Other emerging categories include online education, telemedicine and Software-as-a-Service (SaaS) (EBANX, 2020<sup>[22]</sup>).

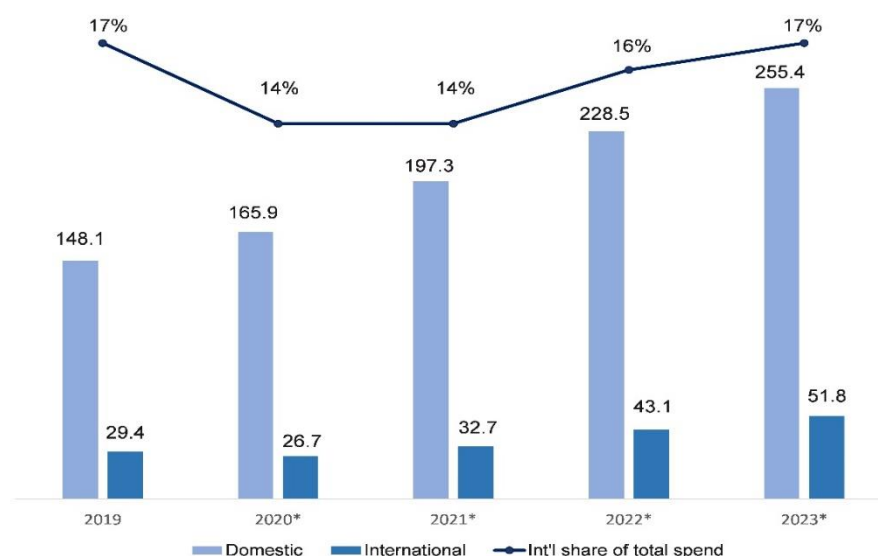
**Figure 2.4. LAC region digital trade newcomers (in millions of consumers)**



Note: 52 million new consumers in the LAC region engaged in digital trade in 2020, more than two times higher than the estimated number of newcomers based on forecast prior to the COVID-19.

Source: EBANX/AMI data (2020), *A study on the state of cross-border e-commerce in Latin America* (EBANX, 2020<sup>[22]</sup>).

Figure 2.5. LAC International vs. domestic digital trade spending (in billions USD)



Note: for the purposes of the study, digital trade (referred to as “e-commerce”) includes online sales of physical goods, digital products and digital services and travel related services (including sales of airline, bus tickets, hotels and accommodations, travel packages, etc.).

\*forecasts.

Source: EBANX (2020), *A study on the state of cross-border e-commerce in Latin America* (EBANX, 2020<sub>[22]</sub>).

### Payment landscape in LAC

The high level of informality and limited access to credit card and other financial services in the region have traditionally challenged the further expansion of digital trade. This situation has improved in recent years, and as of 2018, data show that about half of adults (54.4%) in LAC have accounts for storing funds electronically with a financial institution or through a mobile money service (World Bank, 2018<sub>[24]</sub>). Today, credit cards are the most used payment method for online purchases although other alternative payment methods (including cash-based) are still used frequently (EBANX, 2020<sub>[22]</sub>).

As cultural habits, the degree of card penetration, and availability of different payment methods vary across the region, also the most frequently used payment means differ country by country. For example, in some of the region’s biggest digital trade markets, the majority share of online purchases is paid for through credit cards and debit cards (credit card payments accounting for 84% of online purchase in Chile where the level of card penetration is the highest in the region, while debit card payments account for 30% in Brazil) (EBANX, 2020<sub>[22]</sub>). Meanwhile, cash-based payment methods including through the use of payment vouchers are still being used for up to 20% of online purchases in Mexico (EBANX, 2020<sub>[22]</sub>). Typically, these payment vouchers allow consumers to pay in cash for their online purchases at physical stores located across the country. Other payment methods include e-wallets (including mobile and digital wallets), bank transfers through mobile banking and others that often account for a small percentage such as direct carrier billing, cash on delivery, prepaid cards and miscellaneous payment methods. For recurring payments (e.g. subscription services), debit card and prepaid cards are the most used payment method (EBANX, 2020<sub>[22]</sub>).

As new payment solutions emerge with innovative financial technologies, the payments landscape in the region may also change but at least in the short term, local payment methods are likely to remain very relevant. In particular, cash-based payments may continue to represent a large portion during the pandemic and even afterwards as past experience suggests that cash circulation tends to increase during times of crisis due to rising informality and unemployment, and consumers turning to alternative, cash-

based payment methods. This may be the case even for consumers with a bank account or a credit card that do not have available balances because of credit limits (EBANX, 2020<sup>[22]</sup>).

### Box 2.3. Online payment systems

Secure online payment systems are a core component of digital trade. Internet- and technology-based payment systems are challenging traditional payment methods not only in digital trade but also in offline “brick-and-mortar” sales. Some of the leading types of online payment solutions include the following:

- **Credit cards/debit cards:** a large portion of transactions conducted over the Internet is paid for through credit and debit cards. These payments typically involve banks and credit/debit card companies and networks.
- **Non-bank financial intermediary payment systems:** in response to the need for efficient, reliable and secure solutions for transferring payments over large distances between parties in Internet transactions, new kinds of payment intermediaries have emerged. These payment intermediaries allow individuals to send and receive payments directly, bypassing traditional card payment networks and bank transfer mechanisms.
- **Digital wallets:** these are software-based systems that store users’ financial data online – often in the cloud where the data can be accessed using mobile devices. Digital wallets do not require a traditional bank account and thus facilitate online transactions for consumers who do not have access to the traditional banking system. Digital currencies (cryptocurrencies) also rely on digital wallets to maintain balances and make transactions.

Source: OECD (2015), *The BEPS Action 1 Report* (OECD, 2015<sup>[4]</sup>).

### *Specific digital trade challenges and opportunities for the LAC region*

A number of specific challenges and opportunities can be identified that characterise the economic landscape and digital economy in LAC jurisdictions. These specific factors not only influence the growth potential of digital trade in the LAC region but may also impact VAT policy design in response to digital trade growth in LAC jurisdictions.

- **Payment methods:** as mentioned above, limited access to secure, credit-card-based online payment methods and widespread use of cash-based payment methods in LAC present challenges for further development of international digital trade. Particularly, in goods trade, the practice of paying for purchases “cash-on-delivery” may cause obstacles for online retail growth. The growing level of mobile device ownership in the region, along with the increasing availability of mobile-based payment solutions such as mobile wallets and of other alternative technology-based payment solutions, are likely to help overcome these challenges in the medium and long term.
- **Logistics, traffic and infrastructure** present other major challenges, including the quality of road infrastructure outside major cities, inconsistent postal codes and address systems, etc. (DHL, 2019<sup>[25]</sup>). Evidence suggests that this contributes to the reason why trade in digital content services is growing up to two times faster than trade in physical goods (DHL, 2019<sup>[25]</sup>).

- **Complicated customs procedures** also present challenges. According to a Doing Business report by the World Bank (World Bank, 2020<sup>[26]</sup>)<sup>4</sup>, an import shipment<sup>5</sup> entering a LAC country takes approximately 55.6 hours in border compliance,<sup>6</sup> compared to 8.5 hours in OECD countries.<sup>7</sup> Some of the procedural obstacles include (DHL, 2019<sup>[25]</sup>):
  - Import regulations and customs auditing systems generally focused on bulk freight imports, shipped in containers or pallets rather than for hundreds of thousands of small packages from online sales.
  - Absence of customs regulations specifically for shipments from online sales, creating delays and discrepancies in the interpretation and application of customs rules.
  - Absence of specific customs regulations for the refunding of tariffs that customers paid upon importation when they later return imported goods to the country of origin or intermediary. This can make it close to impossible for consumer and merchant to recover the taxes paid on a returned item.
  - Treatment of shipments varies depending on the logistics channel used (postal services, express carriers or other third-party shipment services) resulting in differences (often delays) in the delivery time and fees and taxes.
- **Large informal economies** in LAC: the region's high levels of informality with respect to economic activity create challenges for tax authorities. Close to 60% of the workers in the LAC region are considered informal workers (OECD, 2020<sup>[27]</sup>). However, digitalisation and especially the rise of the sharing and gig economy may present promising avenues for the formalisation of this activity and enhanced enforcement capabilities for jurisdictions.

## 2.4. An overview of the main types and categories of digital trade that are relevant from a VAT perspective

Three main types of digital trade can be broadly distinguished for VAT purposes based on the type of supply: (1) the provision of digital products and content,<sup>8</sup> (2) online sales of physical goods, and (3) sharing and gig economy services.

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<sup>4</sup> For the purposes of the report, it is assumed that a shipment is in a warehouse in the largest business city of the exporting economy and travels to a warehouse in the largest business city of the importing economy. The mode of transport is the one most widely used for the chosen export or import product and the trading partner, as is the seaport or land border crossing.

<sup>5</sup> For the purposes of the report, it is assumed that each economy imports 15 metric tons of containerised auto parts (HS 8708) from its natural import partner. Shipment value is assumed to be USD 50 000.

<sup>6</sup> For the purposes of the report, border compliance includes customs clearance and inspections, inspections by other agencies (if applied to more than 20% of shipments) and handling and inspections that take place at the economy's port or border.

<sup>7</sup> OECD member countries refer to 36 member countries as of 2019 that include Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States.

<sup>8</sup> An expansive view of this term would encompass online sales of all services and intangibles that a non-resident supplier can deliver remotely to a consumer in another jurisdiction. This would include "traditional" services that are not of a strictly digital nature such as accountancy, legal and management consulting services that businesses can now supply via the Internet without being physically present in the same location as their customer.

### 2.4.1. The provision of digital products and content

Digital products and content generally refer to intangible property (i.e. products capable of being delivered in an electronic format) as opposed to tangible property. Digitisation of information, including text, sound and visual images has greatly increased the number of products and services that can be delivered digitally, including Internet-delivered music, games, movies, TV, radio and books. The increased availability of digitally delivered content has also shortened the supply chains by eliminating the need for traditional agents such as wholesalers, distributors, retailers and other intermediaries, which were often involved in the physical delivery of the traditional tangible content (OECD, 2015<sup>[4]</sup>).

The most common digital content delivery mechanisms may include downloading (e.g. e-books, software, permanent offline storage and access rights to music and video content, etc.) and streaming (e.g. temporary online access rights to music and video, etc.) (United States International Trade Commission, 2013<sup>[31]</sup>). Cloud storage solutions are increasingly used whereby users can purchase digital content and store it online and/or upload existing content for storage and access across multiple devices. A combination of different delivery mechanisms can also be used. Earning models in this area may include charge-per-use, subscription and advertisement or variations/combination of all three models (United States International Trade Commission, 2013<sup>[31]</sup>).

- *Charge-per-use*: a fee is charged per download (for example, a single music track or a single TV episode) or per “view” of video content. The distributor and/or the intermediary facilitating the purchase of the digital content may retain a fee-percentage. This is commonly used for e-book providers.
- *Subscription model*: this model is commonly associated with content streaming whereby users pay a monthly or annual fee for access to a variety of content options. The main advantage for consumers is that a fixed payment gives them access to more content than a single purchase can provide. Subscription streaming services generally require Internet connectivity while viewing and listening, while certain subscription services may allow downloads for a specific period of time so that users can store the content and view/listen to it offline.
- *Advertisement model*: access to the digital content is free to the user while the revenue generated through advertisements supports the supply of the content. Online video-sharing platforms are such an example where users have free access to unlimited video content that other users have uploaded to the platform. Music/video-streaming services may also use this model by offering both a free version with advertisements and subscription versions uninterrupted by advertisements.

In the LAC region, some of the most popular categories of digital content include music, videos, games and increasingly online education (EBANX, 2020<sup>[22]</sup>).

- *Music*: demand for digital delivery of music has increased as it offers more flexibility and a wider range of choice of music. The rise of online platforms and social media platforms has further boosted the market growth providing more opportunities for artists to reach the global audience (Mordor Intelligence, 2021<sup>[29]</sup>). In terms of delivery mechanism, streaming services represent the largest revenue share (Mordor Intelligence, 2021<sup>[29]</sup>). This change has been largely driven by the widespread use of smartphones and advancement in cloud technologies that enable large-scale data storage and transfer (Deloitte, 2015<sup>[30]</sup>). Streaming services may include paid interactive subscription services, non-interactive services (e.g. Internet radio) and non-subscription sites (e.g. social media/network platform) (United States International Trade Commission, 2013<sup>[31]</sup>). In addition to the existing players (platforms) that specialise in the music industry, other large platforms including mobile application stores, online marketplaces and search engines have also entered the market with their own streaming services.
- *Games*: digital delivery of game content can include downloads of game software that otherwise can be purchased in “brick-and-mortar” stores but increasingly refers to pure Internet-based games

such as mobile app games, social network games and cloud-based games. Cloud gaming and smartphone gaming are driving the market growth and the trend is likely to continue particularly in light of the release of 5G and increased Internet access through unlimited data plans on mobile devices (Mordor Intelligence, 2020<sup>[32]</sup>). E-sports is also a fast-growing segment.

- **Videos:** digital video content includes TV shows (broadcast and cable), movies, music videos, sporting events, and user-generated short-form videos (United States International Trade Commission, 2017<sup>[28]</sup>). The video content industry has experienced rapid changes driven by advances in cloud technologies and availability of new distribution channels (e.g., social media platforms). Streaming services are becoming increasingly popular and allow consumers to watch the content at any location where Internet connection is available via multiple devices including mobile products (smartphone and tablets). Revenue models include (i) subscription-based (streaming); (ii) transaction-based (pay-per-view); (iii) paid downloads and (iv) advertising-supported (e.g., user-generated live content) (United States International Trade Commission, 2017<sup>[28]</sup>). Major platforms in this context are further expanding the market with a wider range of available content (certain platforms are making significant investment to create/produce their own content) and services to meet the increasing demand of their consumers worldwide.

### ***Examples of digital products/content and remote services as defined in jurisdictions' VAT legislation***

Example of digital products and services listed in jurisdictions' VAT legislation include, but are not limited to, e-books, movies, TV shows, music, online newspaper subscriptions, online supplies of games, apps, software and software maintenance, online advertising, cloud computing and storage, website hosting, insurance services, online dating services, gambling services, website design and publishing services, webinars and distance learning courses and legal, accounting and consulting services.

#### **2.4.2. Online sales of physical goods**

Online sales of goods are different from those of digital products and digital content in the sense that they involve tangible property that requires a physical delivery as opposed to intangible property that can be delivered digitally. A recent survey indicates that the most popular product categories of online sales of goods include clothing, footwear and apparel followed by consumer electronics, and health and beauty products, representing over 60% of total online purchases (International Post Corporation, 2018<sup>[33]</sup>).

#### ***Growing volume of low-value parcels***

As global e-commerce continues to grow, also the overall volume of parcels crossing borders from online retail sales is increasing every year. Parcel volumes have been estimated to have increased from 44 billion in 2014 to 65 billion in 2016 across 13 major markets and to be growing at an estimated rate of 17%-28% each year between 2017 and 2021 (Pitney Bowes, 2017<sup>[34]</sup>). While the majority of online shoppers still buy mainly from domestic suppliers, some 360 million online shoppers worldwide made international purchases in 2019, around one in four of all online shoppers (UNCTAD, 2021<sup>[15]</sup>). The interest in buying from non-resident suppliers continues to expand. The share of international online shoppers to all online shoppers rose from 20% in 2017 to 25% in 2019 (UNCTAD, 2021<sup>[15]</sup>).

Convenience is a key factor driving the growth of the overall online shopping industry. Customers can find their desired products by visiting websites and gaining additional insights on various products (Grand View Research, 2021<sup>[35]</sup>). Factors such as social media advertising, same-day delivery, custom packaging are also attracting greater numbers of customers (Grand View Research, 2021<sup>[35]</sup>). Lower prices available from suppliers abroad and the unavailability of products and/or brands domestically are also among the top reasons for the growth in international online retail shopping (International Post Corporation, 2019<sup>[36]</sup>). Overall, the market is increasingly witnessing a paradigm shift toward mobile commerce (or “m-

commerce”) from traditional e-commerce, as customers increasingly use smartphones to purchase goods and services online (Grand View Research, 2021<sup>[35]</sup>). Online marketplaces (digital platforms) are increasingly becoming the predominant channel, with the three largest platforms representing about 56% of the total international B2C physical goods purchases in 2020 (International Post Corporation, 2020<sup>[37]</sup>).<sup>9</sup>

The clothing and footwear segment accounted for the largest revenue share in global online retail of almost 25% in 2020. It is expected to continue its dominance in the coming years, while the consumer electronics segment is anticipated to register considerable growth (Grand View Research, 2021<sup>[35]</sup>).

### ***Digital platforms play a central role in online goods trade***

Similar as in online sales of digital products and content, the role of digital platforms is very prominent in the international online retail trade in goods. In addition to digital platforms, transporters (e.g. postal operators and express carriers) play an important role, as fast and seamless delivery is a key success factor in online retail trade in goods.

Depending on the business model, an online vendor can directly ship ordered item(s) to its customers using postal services or express carriers that deal with customs procedures, or via a digital platform through which the items are purchased and that provides its own proprietary delivery services under contractual arrangements with express carriers (typically the larger platforms). Larger platforms often use warehouses (i.e. fulfilment houses) where goods are stored in or near to the jurisdiction(s) where customers are located so as to ensure rapid delivery to customers upon receipt of their orders.

Key stakeholders in typical international online retail goods trade and delivery processes are described briefly in Box 2.4 below.

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<sup>9</sup> These findings are based on a consumer survey conducted by International Post Corporation in 2020 based on the consumers' recent online purchases of physical goods (those who have made at least one purchase in the past three months and made a purchase in the past year). Geographic regions covered include Austria, Australia, Belgium, Canada, China, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, India, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, Morocco, the Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Russian Federation, Slovenia, South Africa, South Korea, Spain, Switzerland, United Kingdom and United States among others.

### Box 2.4. Key stakeholders involved in the supply chain for international online retail sales of goods

- **Purchasers:** the purchaser initiates the purchase, authorises payment to the vendor or to a designated intermediary and in most cases takes receipt of the goods from a local transporter. The purchaser has full information on the product purchased, including its value and the place of delivery. However, the purchaser may not always have full information with respect to import taxes and/or duties. This can lead to situations where they face an unexpected claim for the payment of import taxes and/or duties at the time of delivery. In such cases, the purchaser may refuse to accept the good(s) and the vendor and the transporter may incur additional costs to go through customs clearance procedures for the re-exportation of the returned goods. This would include administrative procedures for arranging refund of taxes and re-importation of the goods into the country of origin. The supplier may simply decide to abandon the goods altogether under these circumstances.
- **Vendors:** the vendor sells good(s) to the purchaser, either through its own website or through a digital platform (e.g. an e-commerce marketplace). Through the platform, the purchaser can transact with the vendor or with the platform itself in case the platform buys goods from vendors and resells them in its own name. Vendors typically collect sets of key data (including description of goods sold, the price paid, the place of delivery, transport details including tracking details, consignee information and possibly the amount of taxes due on importation and associated administrative costs that are included in the price charged to the purchaser). The purchaser's status (business or private consumer) may be also known, depending on the contractual arrangements in place.
- **Online marketplaces (digital platforms)** (see description under subsection 2.5)
- **Transporters**
  - *Express carriers:* express carriers provide specialised integrated door-to-door transport services to the vendor and the purchaser, which can include information management and the handling of tax and customs procedures. Exportation and importation processes handled by express carriers for online vendors or digital platforms can include collection of shipments; collection of relevant data (the nature of the goods, their value and destination as declared by the vendor) from the vendor; transmission of relevant documentation and data in electronic format to the customs authorities in the country of export and in the country of import for customs clearance; delivery of shipments; and possibly payment of duties and taxes at importation; and, if required, collection of these duties and taxes from the purchaser upon delivery. Vendors/digital platforms usually pay the express carriers to take care of the customs clearance procedures and payment of duties and taxes at importation.
  - *Postal operators:* postal operators are subject to Universal Postal Union (UPU) regulations, which provide obligations regarding remittance of mail and consignments to the addressee and confidentiality of mail. Unlike the express carriers, postal operators traditionally operate in a mainly paper-based environment. However, this is changing and electronic advance data (EAD) are becoming available for goods that are transported via postal operators. The World Customs Organization (WCO) and the UPU have developed standards and guidelines to implement the advance electronic exchange of information between customs authorities and postal services. Although it is still in early stages, several jurisdictions have plans to mandate the exchange of electronic data through the international post in 2021, including in both the United States and Europe. Additionally, based on the UPU E-commerce Guide 2020, several express carriers and postal operators have participated in pilot activities to test systems for the use of EAD, and some postal authorities are now routinely exchanging EAD.
  - Whether the goods are delivered via express carriers or postal operators, the purchasers generally have to pay the duties and taxes, and possibly the costs associated with the customs clearance procedure.
- **Financial/payment intermediaries:** this term includes different types of financial and payment intermediaries. Most notably, the term refers to an institution, such as a bank that serves as a middleman among diverse parties in order to facilitate financial transactions. This includes issuing banks (e.g. providers of debit and credit cards to consumers) or similar institutions (e.g. providers of prepaid debit cards), merchant acquirer banks (who process funds from sales on behalf of suppliers), as well as debit and credit card companies and networks that process card transactions.

These intermediaries may further include parties that offer ‘payment gateway’ services to securely pass a customer’s payment details onto the supplier’s bank for processing. With the ongoing evolution in payment ecosystems, these intermediaries also now encompass emerging market players such as mobile payment solution providers. While financial and payment intermediaries may collect and store data such as the vendor’s and the purchaser’s account information (name, address, bank details) that they obtain during the payment process, they generally do not have access to information about the nature of the goods sold or the place where these are delivered.

- **Customs and tax administrations:** the main roles of customs authorities include trade facilitation, border protection and the collection of duties and taxes at importation. The trade facilitation includes the collection of trade information for governments, traders and other interested parties and ensuring a fast and efficient processing of the customs clearance procedure. The border protection focuses on safety and security risk assessment to ensure supply chain safety and security including prevention of forbidden products (e.g. specific categories of animals, plants, illegal counterfeits, etc.). Tax collection role includes ensuring the correct assessment, reporting and payment of customs duties, excise, VAT and other possible taxes payable on imported goods. In many cases, the customs authorities collect these taxes, excise and customs duties at the time of importation or of clearance of customs duties. Customs authorities collect the taxes on behalf of tax administrations and according to the tax rules in place. Appropriate assessment, collection and control require close co-operation between tax and customs authorities.

Source: OECD (2015), *The BEPS Action 1 Report*, Annex C (OECD, 2015<sup>[41]</sup>); UPU (2020), *UPU E-Commerce Guide* (Universal Postal Union, 2020<sup>[38]</sup>).

### 2.4.3. Sharing/gig economy platforms

The growth of the so-called sharing and gig economy (also known as the “collaborative economy”) has been remarkable in recent years at global and regional level. It has been powered by the growing capacity of digital platforms to connect millions of economic actors with customers worldwide. The growth of sharing and gig economy activity has created a new commercial reality in a number of industries, particularly in the sectors of transportation (with the emergence of “ride-sourcing”) and accommodation (particularly in short-term rentals) and is also progressively transforming the professional services and finance sectors.

Specific features of the sharing and gig economy and an overview of the core components of a comprehensive VAT policy strategy for tax authorities to consider in response to the growth of the sharing and gig economy are further described in Section 3C of this Toolkit.

## 2.5. Key actors in digital trade from a VAT perspective

### 2.5.1. The emergence of ‘multi-sided’ digital platforms

Digitalisation has enabled the emergence of platform-based business models across many different sectors of the economy. The rise of multi-sided digital platforms has been particularly important in facilitating vendors’ access to a greater number of consumers both within their own jurisdiction of residence and abroad, driving growth of international digital trade in both volume and numbers of participants.

These multi-sided digital platforms are distinguished from the single-sided modes of selling, which online retailers initially used to mirror the business models of “bricks-and-mortar” stores. As the Internet became popular, traditional retailers increasingly created their own websites through which they started selling online to complement their offline offerings. With technological innovation, this ‘single-sided’ mode of selling (i.e. a website owned by a business selling exclusively on its own proprietary account, often to only one targeted group of end-users) has evolved and expanded into multi-sided platforms allowing online vendors from around the world to target multiple customer categories that can be located around the world.

Both online sellers and their online customers are customers of the digital platforms that facilitate the interaction between those two “sides”.

Multi-sided platforms are digital platforms that enable, by electronic means, direct interaction between two or more groups of participants (typically buyers and sellers) with two key characteristics: (i) each group of participants (‘side’) are customers of the multi-sided platforms in some meaningful way; and (ii) the multi-sided platform is the agent that enables a direct interaction between the participating sides (OECD, 2019<sup>[3]</sup>). The platform has no intrinsic need to have a physical presence in the jurisdiction of these participating sides (sellers and customers), which in turn may reside in different jurisdictions from one another.

The rise of the multi-sided digital platform is one of the key features of the digital economy. The digital economy itself is therefore often characterised as the “platform economy”. Prevalent business models of the digital economy (further described in the following sub-section) and emerging trends suggest that the role of digital platforms still continues to increase.

### **2.5.2. Online marketplaces**

The term “online marketplaces” can refer to different types of digital platforms that facilitate online sales of physical goods and/or digital services and products.

Typically, an online marketplace connects buyers and sellers to transact with each other by providing product listings from third-party sellers and/or those of its own brands/offerings. A marketplace may also act as a reseller by purchasing other brand-name items from a wholesaler and then reselling them on the marketplace.

The online marketplace facilitates product searches and purchases for customers, including features such as product filtering based on price, customer reviews, secure online payment and customer support services (e.g. returns, refunds, etc.). The marketplace enables sellers to reach a large number of customers (often worldwide) by providing an online platform to list their products and (often) offering additional services such as advertising, warehousing, packing and shipping for a fee.

Revenue sources for marketplaces may include advertising fees, sales commissions (e.g. calculated on the basis of volumes of sales made by sellers through the platform and often withheld from customers’ payments for these sales), or fees for sales support services such as fulfilment (United States International Trade Commission, 2017<sup>[28]</sup>). The marketplace may also charge membership fees to consumers for which benefits such as free/faster shipping and/or access to other digital content (e.g. video streaming) on the platform is offered (United States International Trade Commission, 2017<sup>[28]</sup>).

A relatively small number of large online marketplaces dominate the international B2C retail trade, with the three largest platforms representing about 56% of consumer purchases of goods made online in the major global markets (International Post Corporation, 2020<sup>[37]</sup>). Successful marketplace models have been replicated regionally, with the emergence of marketplaces that obtain dominance in certain markets by catering to region-specific needs and circumstances. High market concentration and “winner-takes-most” commercial dynamics are common. Based on strong network effects and increasing returns to scale, the limited number of dominant players continues expanding their product and service offerings to other areas while adopting a variety of business models for different operations.

### **2.5.3. Social media/social networks**

Usually based on a large network of users, social media platforms allow users to engage with each other by sharing, creating, and communicating content and information online. Strictly speaking, social media platforms are different from social networking platforms as the latter focus more on providing a “rich social experience” to users by allowing them to interact and network with other users, which may often be contacts they already know offline (U.S. Subcommittee on Antitrust, Commercial and Administrative Law,

2020<sup>[39]</sup>). On the other hand, social media platforms primarily facilitate the distribution of (digital) content among a wide range of groups of people, including strangers.

Typically, social media platforms offer their services to users for free in a pecuniary sense (e.g. uploading and sharing of photos and videos). Some may offer additional services/functionality for a price (e.g. fee for premium membership to be able to use an in-app messaging feature). The main revenue source for social media platforms is typically advertising (U.S. Subcommittee on Antitrust, Commercial and Administrative Law, 2020<sup>[39]</sup>).

Building a strong user base is essential for the success of these social media/network platforms. Once a large number of users are attracted, it is likely to create an entry barrier for new/small players, as switching costs for the users may be relatively high considering the data/content they have put in (U.S. Subcommittee on Antitrust, Commercial and Administrative Law, 2020<sup>[39]</sup>). Accordingly, the market is concentrated among the established players (a few large platforms) that have successfully attracted large numbers of users (U.S. Subcommittee on Antitrust, Commercial and Administrative Law, 2020<sup>[39]</sup>). Based on strong network effects, social media/networking platforms have expanded their services into other areas of digital trade such as online gaming, online sales of goods, etc. In fact, these platforms have become a powerful marketing tool, as consumers may be more likely to have confidence in purchasing a brand or product recommended by friends, peers or family members with whom they interact on a digital platform. As more social media/network platforms diversify their services and offerings, it becomes increasingly challenging and difficult to compartmentalise a particular platform into a specific category or type of digital business model.

Online dating is a variation of social networking that facilitates matchmaking services. Most of these platforms are subscription based. Some are free to the users, generating revenue from advertising. Similar to other content industries, the growing popularity of use of mobile devices and mobile applications make online dating more accessible and more convenient, notably by providing location-based matching services (United States International Trade Commission, 2013<sup>[31]</sup>).

#### **2.5.4. App stores (mobile app stores)**

Application stores are a type of digital distribution platform for software applications (apps). Users can install app stores on their digital devices (predominantly mobile devices) in order to access/share digital content or services, play games or engage in transactions for physical goods and/or services.

While there are a variety of application providers, the mobile operating systems market is dominated by the two largest global players (i.e. iOS and Android) that have the power to dictate the terms and conditions of software distribution by application providers on to the mobile devices that run their respective operating systems (United States International Trade Commission, 2017<sup>[28]</sup>). Specifically, app stores have rules that determine the types of apps available on the app store, how payment is collected from users for the purchase of apps, the distribution of revenue between the app developer and the app store, and other details that relate to the conduct of app developers in using the app store services (United States International Trade Commission, 2017<sup>[28]</sup>).

App stores allow app developers to reach a large consumer base globally at lower costs by providing a platform for distribution, storage of apps, management of downloads/updates and consumer payment. On the consumer-facing side, app stores also provide a sense of trust and security that the apps installed on their mobile devices are secure and do not violate their privacy.<sup>10</sup>

Typically, app stores charge app developers commissions of up to 30% on sales of apps that charge a fee for download (Borck, Caminade and Wartburg, 2020<sup>[40]</sup>). In addition, app stores usually process the

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<sup>10</sup> It is however recognised that concerns over users' privacy are increasingly raised by different government authorities.

payment for purchases based on the consumer's personal and payment-related information that has been provided in advance. After deducting commissions, app stores remit the balance to the app developers. For app developers that use the two prominent operating systems (i.e. iOS and Android), the use of the app stores' payment mechanisms is mandatory (United States International Trade Commission, 2017<sup>[28]</sup>).

Mobile apps have become the primary means that consumers use to access content and services on mobile devices and to carry out a range of activities in their daily lives (including basic communication, entertainment, news, business transactions).

### 2.5.5. Online search engines

Online search engines allow users to retrieve webpages and information that are relevant to a query they have entered in the form of a search term. Depending on their design, search engines can either provide a list of general search results or a targeted category of results (e.g. flight information, travel accommodation booking information). The majority of general search engines generate their revenue through the sale of advertising space while allowing users to search for free in a monetary sense (United States International Trade Commission, 2017<sup>[28]</sup>).

Business models are evolving, however, as consumers increasingly use other platforms as their preferred source of information for a specific category of search (e.g., online marketplaces for product search). In response to the changes in consumer behaviours, general search engines are expanding their service offering, e.g., with price comparison for shopping, travel/flight booking, etc. Their ability to offer further sophisticated products and services is likely to improve over time by leveraging the considerable amounts of data that they typically collect. For this purpose, both general search engines and other platforms are heavily investing in improving their data analytics using machine-learning algorithms and artificial intelligence.

### 2.5.6. Cloud computing

Cloud computing refers to the on-demand provision of computer system resources, which can include computing, data storage, software, and data management. With an Internet connection, users can access these services anywhere using different types of devices. These resources are not stored on a single computer but are available for utilisation by everyone who has access to that "cloud" of computing services (could be a single organisation or multiple organisations, the general public or some combination thereof) (OECD, 2015<sup>[4]</sup>).

The cloud is transforming business models as firms no longer need to make significant investments in ICT infrastructure and computing capacity, which makes it particularly cost-effective for SMEs.

The most prominent examples of cloud computing service models include:

- **Software-as-a-service (SaaS):** it allows users to access the provider's software from a central cloud-based location via the Internet. It can be provided either to business customers (B2B) or individual customers (B2C) and broadly includes business process as a service (BPaaS), data as a service (DaaS), unified communication as a service (UCaaS) and security as a service (SECaaS) (United States International Trade Commission, 2017<sup>[28]</sup>). The consumer generally does not manage or control the underlying cloud infrastructure, including the network, servers, operating systems, storage, or individual application capabilities, with the possible exception of limited user-specific application configuration settings (OECD, 2015<sup>[4]</sup>). Examples of services include desktop and mobile applications; video streaming; data processing and analytics and the Internet of Things (IoT). Development of e-government services such as online tax filing or renewal of driver's license is also an example of SaaS deployment.

- **Infrastructure-as-a-service** (IaaS): providers offer users (both firms and individuals) fundamental computer infrastructure/computing resources (such as hardware, storage, servers, and data centre space) on demand. IaaS clouds often provide additional resources such as a virtual-machine disk image library, raw (block) and file-based storage, firewalls, load balancers, Internet Protocol (IP) addresses, virtual local area networks (VLANs), and software bundles (OECD, 2015<sup>[4]</sup>). The customer does not manage or control the underlying cloud infrastructure, but has control over the operating system, storage, and deployed applications, and may be given limited control of select networking components (e.g. host firewalls).
- **Platform-as-a-service** (PaaS): PaaS providers offer hardware and software tools for software developers to create and run applications through a Web browser on a third-party remote server (OECD, 2015<sup>[4]</sup>). The provider provides the networks, servers, storage and other services. The client does not control or manage the underlying cloud infrastructure, including the network, servers, operating systems, or storage, but has control over the deployed applications.

# **3**

## **Effective collection of VAT on international digital trade – The recommended policy framework**

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Section 3 of the VAT Digital Toolkit for Latin America and the Caribbean provides a comprehensive analysis of the recommended policy framework for the collection of VAT on international digital trade and concrete guidance for its implementation, based on internationally agreed standards and best practices with respect to online trade in services, intangibles, and low-value goods.

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## Guidance for readers

- Section 1 briefly summarises the OECD guidance for the collection of VAT on international trade that provides the basis for the recommended policy framework.
- Section 3 will now more comprehensively summarise and analyse the recommended policy framework for the collection of VAT on international digital trade. Section 3 is primarily for the benefit of policymakers that are tasked with developing a jurisdiction's policy for the collection of VAT on international digital trade and with designing the legislative framework for its implementation.
- Section 3 has three distinct but related parts:
  - **Section 3A. International Supplies of Services and Intangibles** (especially services and intangibles supplied online)
  - **Section 3B. Imports of Low-Value Goods** (especially imports of low-value goods that are sold online)
  - **Section 3C. The Sharing and Gig Economy**
- Section 3 lays the foundation for policy makers and tax administrators to fully benefit from the guidance in Sections 4 and 5 of the Toolkit. Section 4 guides policymakers and administrators through the development of the administration and operational infrastructure for effective VAT collection mechanisms. Section 5 advises them on the development of robust audit and risk management frameworks and strategies.

### 3.1. An overview of OECD recommendations

The recommended policy framework presented in Section 3 of the Toolkit is based on OECD guidance and on the experience on the growing number of jurisdictions worldwide that have successfully implemented this guidance. The OECD does not attempt to draft model legislation for adoption by national jurisdictions. The guidance instead presents internationally agreed central policy principles that result from intensive dialogue and consultation among tax authorities worldwide as well as with the business community. The OECD guidance is aimed at informing national legislation and providing recommendations for the legal and administrative implementation of these principles.

This guidance presents a number of recommended rules and mechanisms for the collection of VAT on international trade. These are especially relevant to the taxation of international digital trade, including supplies of digital services and products, and online sales of goods. A brief and high-level summary of the main elements of this guidance is presented in Box 3.1 below. Of course, readers should consult the analysis within the remainder of Section 3 for an understanding of the nuances and rationale of this guidance and of the possible approaches for its implementation.

### Box 3.1. A general overview of OECD guidance

#### International supplies of services and intangibles (including online supplies of services and intangibles)

- **Establishment of taxing rights.** Jurisdictions that wish to impose VAT on internationally supplied services and intangibles to customers within their jurisdiction should create the appropriate legal basis for asserting these taxing rights.
- They can achieve this by implementing rules that determine the place of taxation of supplies of services and intangibles by reference to the location of the customer.
- For business-to-consumer (B2C) supplies of services and intangibles, the location of the customer is generally determined by reference to the usual residence of the private consumer. For business-to-business (B2B) supplies of services and intangibles, standard guidance is to determine the location of the customer by reference to the place where the customer has located its permanent business presence. The OECD guidance recognises that a jurisdiction may choose not to distinguish between B2B and B2C supplies in determining the place of taxation, depending on the design of its existing VAT framework.
- *Section 3A addresses these recommendations.*

#### Imports of low-value goods (especially online sales of goods)

- **Reforming traditional VAT collection processes.** Jurisdictions that wish to collect VAT on goods that are sold online and that are imported from abroad with a value below the jurisdiction's "low-value" threshold for customs duty relief are encouraged to consider making the suppliers of these goods (or the intervening digital platform; see below) liable for collecting and remitting the VAT.
- The VAT collection will then move away from the existing customs process at the border to the supplier, except where consignments exceed the customs duty relief threshold in the jurisdiction. Imports above the customs duty relief threshold generally remain subject to the normal customs process.
- *Section 3B addresses these recommendations.*

#### International supplies of services and intangibles and imports of low-value goods

- **Establishment of effective mechanisms for the collection of VAT from non-resident suppliers.** Jurisdictions are encouraged to legislate for the creation of a simplified VAT registration and collection regime for non-resident suppliers to settle their VAT obligations on international B2C supplies of services and intangibles. Jurisdictions may consider extending the application of such a collection regime to supplies of low-value goods that are imported from abroad by non-resident suppliers, where such suppliers have been made liable to collect and remit the VAT on these goods.
- Jurisdictions are encouraged to implement the reverse charge mechanism for the collection of VAT on B2B supplies of services and intangibles by a non-resident supplier to a business within their jurisdiction to relieve non-resident suppliers of the requirement to register for VAT on supplies to business customers.
- *Section 3A addresses these recommendations, and Section 3B analyses distinct elements for imports of low-value goods.*

#### Digital platforms

- **Establishing a central role for digital platforms.** Jurisdictions can significantly enhance VAT collection and administrative efficiency by making digital platforms liable for collecting and remitting the VAT on online B2C supplies of services and intangibles and of imported low-value goods that they have facilitated.
- Jurisdictions may consider the advantages of extending the regime to domestic online supplies, or a subset of them, under certain circumstances.

- Jurisdictions may also consider options for imposing information reporting requirements upon digital platforms, as well as related educational responsibilities, to encourage and promote compliance by third-party suppliers selling over their platforms.
- *Section 3A addresses these recommendations, and Section 3B analyses distinct elements for imports of low-value goods.*

#### **Sharing and gig economy services**

- *Section 3C of the Toolkit explores the distinct issues relating to the sharing and gig economy.*

## **3.2. Practical implementation of OECD guidance**

By incorporating the foregoing recommendations into its legislation, a jurisdiction will in principle have addressed the main overarching challenges of the digital economy for VAT on international supplies, including B2C supplies by non-resident suppliers. They cover the large majority of businesses, business models, and transactions that OECD guidance addresses. To be sure, implementing this guidance in practice may prove to be a challenging process for a variety of reasons including the need to integrate the recommendations smoothly into existing frameworks of tax legislation, which are often complex.

### **3.2.1. LAC jurisdictions that already align with OECD guidance**

For tax policy officials from jurisdictions that have already incorporated, in whole or in part, these recommended approaches into their national tax legislation, the principal remaining task is to assess the scope and effectiveness of their existing national legislation. In undertaking this task, jurisdictions may wish to evaluate their overall consistency with these approaches notably in facilitating compliance and administration and in limiting opportunities for avoidance and evasion. When tax policy officials identify deficiencies in their jurisdiction's existing legislation, this Toolkit may be helpful in identifying effective solutions, notably to minimise tax revenue losses and disruption to businesses.

### **3.2.2. LAC jurisdictions considering reforms to align with OECD guidance**

This Toolkit anticipates that many readers will be tax policy officials from jurisdictions that have not yet incorporated (or are beginning to incorporate) components of OECD guidance into their national tax legislation. Translating the guidance into effective national VAT legislation requires careful consideration and a strong understanding of how their jurisdiction's VAT framework currently operates.

Sections 3A and 3B of this Toolkit are of particular relevance to those jurisdictions that are in the early stages of the process of developing a policy framework and corresponding legislation reflecting the OECD guidance. These sections seek to provide advice as to how tax officials may approach this task as effectively and efficiently as possible.

Jurisdictions that have not yet embraced OECD guidance may benefit from reviewing the experience of other jurisdictions that have been successful in adopting legislation that implements the OECD guidance, including the experience of other Latin American and the Caribbean ("LAC") jurisdictions. The Toolkit therefore provides a number of potentially instructive examples. A strong note of caution is given, however, in order to acknowledge that it is very unlikely that a jurisdiction can directly transpose legislation from another jurisdiction into its own laws without modification, even where both jurisdictions are Spanish-speaking countries in the LAC region. As there is clearly no "one-size-fits-all" approach to incorporating the guidance provided in this Toolkit for the collection of VAT on international digital trade, this Toolkit has opted not to present specific models for such legislation. It rather sets out possible options and recommended approaches to support jurisdictions' policy decisions (Sections 3A, 3B, 3C) and provides a

checklist of the main issues to consider in developing policy and legislation targeted at international B2C sales of services and intangibles and B2C sales of low-value goods (Section 6).

In their efforts to incorporate this guidance into their legislative framework, jurisdictions are strongly encouraged to develop an internal process of robust oversight and review of new legislation by senior policymakers and government lawyers. They should also combine this with an open and frank process of consultation with the business community.

### ***3.2.3. Administrative and operational infrastructure: Section 4 of the Toolkit***

The tasks of developing policy frameworks and legislation to implement the OECD guidance summarised above are distinct from (though closely related to) the task of creating the administrative and operational infrastructure that businesses will utilise to comply with laws for the collection of VAT on international digital trade. The Toolkit addresses administrative and operational infrastructure, which can also inform the policy design and drafting of the law, in Section 4.

### ***3.2.4. Audit and risk management: Section 5 of the Toolkit***

The tasks of developing policy frameworks and legislation addressed in Section 3, and of developing administrative and operational infrastructure addressed in Section 4, are both distinct from the tasks associated with establishing an audit and risk management framework. This framework is necessary to monitor compliance and to combat fraud and evasion in the context of the application of VAT to international digital trade. The Toolkit addresses audit and risk management issues in Section 5.

## **Section 3A. International Supplies of Services and Intangibles**

(In particular online sales of services and intangibles)

### 3A.1. Introduction to the recommended policy framework for international supplies of services and intangibles

Section 3A of this Toolkit provides readers with a comprehensive summary of the core elements of the policy framework that the OECD recommends to jurisdictions for the collection of VAT on international supplies of service and intangibles.

The OECD has successively published guidance since 2015 that addresses challenges of VAT collection on international digital trade. Three of these reports in particular are central to the successful development of a policy framework for the taxation of the services and intangibles component of digital trade. These services and intangibles notably include both “digital services” such as streaming services for film and television content and “digital products” such as e-books and computer software that consumers can buy for permanent download onto their electronic devices.

Each of the reports identified in the previous passage broadly corresponds to each key building block or element of the policy framework for imposing and collecting VAT on international supplies of services and intangibles:

1. **Establishment of taxing rights** - See subsection 3A.2.
  - OECD reference work: The Guidelines (OECD, 2017<sup>[1]</sup>).
2. **Establishment of effective collection mechanisms** - See subsection 3A.3.
  - OECD reference work: The Collection Mechanisms Report (OECD, 2017<sup>[2]</sup>).
3. **Establishing a central role for digital platforms** - See subsection 3A.4.
  - OECD reference work: The Platforms Report (OECD, 2019<sup>[3]</sup>).

Section 3A provides readers with a comprehensive summary of these key building blocks. An understanding of these key elements of the policy framework for services and intangibles is an essential foundation for navigating the rest of the material in this Toolkit.

#### ***Section 3A is relevant for the collection of VAT on internationally traded services and intangibles as well as for the collection of VAT on imports of low-value goods***

The policy framework that the OECD recommends for internationally traded services and intangibles is very similar, though by no means identical, in substance to the framework that the OECD recommends for the importation of low-value goods from online sales. Section 3B focuses on policies for the collection of VAT on low-value goods that are sold online to private consumers and that are imported from abroad. Section 3B will frequently cross-reference, rather than repeat, the core discussion in 3A of approaches that countries can just as effectively apply to goods as to services and intangibles.

In addition, the policies that Section 3A outlines define the broad objectives, scope and design of the administration and operational infrastructure for the effective collection of VAT from non-resident suppliers as well as from digital platforms. Section 4 of the Toolkit provides extensive guidance to countries on successfully building an administration and supporting infrastructure. Section 4 assumes that readers have a good grasp of the policy foundations. The same is true of Section 5 on the development of audit and risk management strategies to promote and enforce compliance.

#### ***Previous OECD publications as important reference works***

As a preliminary caveat, this Toolkit draws readers’ attention to the fact that the summaries and analysis that follow in Section 3A, though designed to be thorough, are necessarily a summary nature. The three reports corresponding to the key building blocks of the policy framework for international services and intangibles (identified above), comprise a total length of over 300 pages. Two further reports that closely

connect to them, the 2015 BEPS Action 1 Report and the 2018 BEPS Interim Report, contain in aggregate over 500 more pages.<sup>11</sup> Section 3A, and Section 3 of the Toolkit in its whole, are therefore an attempt to distil an optimal level of insight and detail from that large body of policy guidance into as concise a form as possible.

Tax policymakers, administrators and other interested parties studying this Toolkit may wish to explore particular topics within Section 3 in more detail. The Toolkit strongly advises such readers to consult the original source material as set out in the OECD reports, which it cites above.

### 3A.2. Establishment of taxing rights

#### Key messages

**The International VAT/GST Guidelines as the starting point.** The Guidelines provide internationally agreed standards and principles allowing jurisdictions to allocate and assert taxing rights for VAT on international supplies of services and intangibles in accordance with the “destination principle”. According to this principle, internationally traded services and intangibles are subject to the VAT rules of the jurisdiction where their consumption takes place. This provides the foundation for jurisdictions to establish an appropriately strong and internationally consistent legal basis for imposing VAT on these supplies.

**Establishment of taxing rights over international business-to-consumer (B2C) supplies of services and intangibles by reference to the customer’s usual residence:** Considering that the essential purpose of VAT is to impose a broad-based tax on final consumption, it is important that a jurisdiction’s VAT regime is properly equipped to ensure the effective collection of VAT on supplies to final consumers that are made online, including where these supplies are made by suppliers that are not located within the jurisdiction. Guideline 3.6 of the Guidelines provides the internationally agreed principle for establishing a jurisdiction’s taxing rights over such supplies. According to Guideline 3.6, the place of taxation for services and intangibles that a supplier can deliver remotely is determined by reference to the customer’s usual residence. This Guideline notably covers all supplies that policymakers would typically define as “online supplies” or supplies of “digital services” and “digital products”. The Guidelines recognise that exceptions to this principle may be appropriate in certain circumstances, but these may be limited in the case of online supplies.

**Designing “place-of-taxation” rules by reference to the customer’s usual residence.** The implementation of Guideline 3.6 will allow jurisdiction to assert taxing rights for VAT on B2C supplies of services and intangibles made remotely, including through the Internet and when the supplier of these services or intangibles has no physical presence in that jurisdiction. There are different legal and administrative approaches and formulations for the implementation of this principle. This includes in particular the identification of effective information elements (“indicia” such as billing address, bank and credit card information, etc.) to determine the jurisdiction of the consumer’s usual residence.

**Readers will find checklists to support the policy design and legislation in Section 6 of the Toolkit.**

**It is important to consider all the Guidelines as one coherent body.** The OECD advises that jurisdictions understand all of the Guidelines in a holistic sense and the connections between them. This is essential to the development of an efficient and effective national VAT framework for taxation of both domestic and international transactions. Distinct but related items in the Guidelines include the following:

<sup>11</sup> The two BEPS Reports that this sentence refers to do of course principally focus on the direct tax challenges of digitalisation, but nevertheless a substantial component of them provides detailed analysis and recommendations in relation to the VAT challenges.

- **“On-the-spot” supplies:** The relationship between taxation of international B2C supplies of services and intangibles and taxation of other supplies will depend on the specific nature of a country’s VAT framework. Most jurisdictions will choose, explicitly or implicitly, to distinguish the rule that they utilise for imposing VAT on “on-the-spot” supplies of services and intangibles from the rule for determining the place of taxation of services and intangibles that can be supplied remotely (including internationally, as is the case for most supplies that are made online). These “on-the-spot” supplies are the traditional B2C services that are typically consumed at an identifiable place where they are physically performed (e.g. hairdressing, restaurant services, accommodation) for which the place of taxation can be effectively determined by reference to the place of performance of the supplier (Guideline 3.5).
- **International B2B supplies:** The OECD recognises that many VAT systems have implemented distinct rules for determining the place of taxation of international B2B supplies of services and intangibles along with a distinct VAT collection mechanism. For these jurisdictions, the Guidelines recommend determining the place of taxation by reference to the business customer’s location reflected in its permanent business presence (Guideline 3.2 and supporting commentary). Where the supplier is a non-resident in the jurisdiction of taxation, the Guidelines recommend the implementation of a reverse charge mechanism where this is consistent with the overall design of the jurisdiction’s VAT system. Such a mechanism switches the liability to remit the VAT from the supplier to the business customer.
- **Specific rules and exceptions:** The Guidelines also provide jurisdictions with a framework for developing specific rules for supplies where the determination of the place of taxation by reference to the location of the customer would be less effective (Guideline 3.7). In particular, the Guidelines recommend that the place of taxation for services and intangibles connected with immovable property is determined by reference to the jurisdiction where the property is located (Guideline 3.8).

## Guide to Section 3A.2.

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## ***Introduction - Place-of-taxation rules within the broader context of the International VAT/GST Guidelines***

This subsection of the Toolkit sets out the core recommendations for the design of effective VAT rules for determining the place of taxation of internationally traded services and intangibles, in accordance with the internationally agreed destination principle. These recommended rules and mechanisms are set out in Chapter 3 of the Guidelines, which form the basis for this subsection. It further builds on the follow-up guidance developed by the OECD to support the effective and consistent implementation of these standards and principles and on the experience gained by the rapidly growing number of jurisdictions that have implemented these standards and principles worldwide.

The other main components of the Guidelines are as follows:

- Chapter 1 of the Guidelines, which sets out the core features of VAT, with a particular focus on their application to international trade.
- Chapter 2 of the Guidelines, which sets out the core standards for achieving the fundamental principle of VAT neutrality, in domestic trade as well as in the international context.
- Chapter 4 of the Guidelines, which sets out a number of mechanisms for supporting the principles of the Guidelines in practice, including mutual co-operation, dispute minimisation and application in cases of avoidance and evasion.

A comprehensive summary of these other main components is set out in Annex A to the Toolkit. The standards and recommendations for determining the place of taxation of internationally traded services and intangibles in Chapter 3 of the Guidelines are closely connected with the other core components of the Guidelines with which they form a coherent body. Tax policymakers and administrators who are not yet familiar with the Guidelines may therefore wish to consult the summary of the Guidelines in Annex A when considering the recommendations for the design of place-of-taxation rules as set out in this subsection 3A.2.

### ***3A.2.1. Implementing the destination principle***

The Guidelines present internationally agreed standards and guidance for the implementation of the destination principle as the basic rule for the application of VAT to international trade, in accordance with the general international consensus. The first core recommendation of the Guidelines for determining the place of taxation for internationally traded services and intangibles thus provides that: **“For consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption”** (Guideline 3.1).

The application of the destination principle in VAT achieves neutrality in international trade. Under the destination principle, exports are not subject to tax and businesses are entitled to a refund of input taxes (that is, exports are “free of VAT” or “zero-rated”). While international supplies are not taxed in the jurisdiction of origin, the destination principle means that imports are taxed in the jurisdiction of destination on the same basis and at the same rates as domestic supplies. Accordingly, the total tax paid in relation to a supply is determined by the rules applicable in the jurisdiction of its consumption, and all revenue accrues to the jurisdiction where the supply to the final consumer occurs.

In order to apply the destination principle to internationally traded services and intangibles, VAT systems must have mechanisms for identifying the jurisdiction of consumption by connecting such supplies to the jurisdiction where the final consumption of the services or intangibles is expected to take place. VAT systems need place-of-taxation rules to implement the destination principle not only for B2C supplies, which involve final consumption, but also for B2B supplies, even though such supplies do not involve final consumption. B2B supplies are taxed under the VAT’s staged collection process, and, in this context, the place-of-taxation rules should facilitate the ultimate objective of the tax, which is to tax final consumption

under the destination principle. The Guidelines set out the recommended approaches that reflect the destination principle for determining the place of taxation for international B2C and B2B supplies of services and intangibles.

***(i) Why does this Toolkit distinguish between B2C and B2B supplies of services and intangibles?***

The approaches used by VAT systems to implement the destination principle for B2C supplies are often different from those used for B2B supplies. This distinction is attributable to the different objectives of taxing B2C supplies and B2B supplies: taxation of B2C supplies involves the imposition of a final tax burden, while taxation of B2B supplies is merely a means of achieving the ultimate objective of the tax, which is to tax final consumption.

Thus, the objective of place-of-taxation rules for B2B supplies is primarily to facilitate the imposition of a tax burden on the final consumer in the appropriate country while maintaining neutrality within the VAT system. The place-of-taxation rules for B2B supplies should therefore focus not only on where the business customer will use its purchases to create the services or intangibles that final consumers will acquire, but also on facilitating the flow-through of the tax burden to the final consumer while maintaining neutrality within the VAT system. The overriding objective of place-of-taxation rules for B2C supplies, on the other hand, is to predict, subject to practical constraints, the place where the final consumer is likely to consume the services or intangibles in question.

In addition to the different objectives of the place-of-taxation rules for B2C and B2B supplies, VAT systems often employ different mechanisms to enforce and collect the tax for both categories of supplies. These different collection mechanisms often influence the design of place-of-taxation rules and of the compliance obligations for suppliers and customers involved in international supplies. In light of these considerations, the Guidelines present separate rules for determining the place of taxation for B2C supplies and for B2B supplies. This should however not be read as an explicit recommendation for VAT regimes to distinguish between B2B and B2C supplies in determining the place of taxation and in collecting VAT on international supplies.

***(ii) Why does this Toolkit recommend the use of “proxies” for determining the place of taxation of internationally traded services and intangibles?***

In theory, place-of-taxation rules should aim to identify the actual place of final consumption for B2C supplies and the place of business use for B2B supplies (on the assumption that this best facilitates implementation of the destination principle). However, the Guidelines recognise that place-of-taxation rules are in practice rarely aimed at identifying where final consumption or business use actually takes place. This is a consequence of the fact that VAT must in principle be charged at or before the time when the object of the supply is made available for final consumption or business use. In most cases, at that time the supplier will not know or be able to ascertain where such final consumption or business use will actually occur.

VAT systems therefore generally use proxies for the place of final consumption or business use to determine the jurisdiction of taxation, based on features of the supply that are known or knowable at the time that the tax treatment of the supply must be determined. The Guidelines therefore determine certain general rules and corresponding proxies for identifying the place of taxation of supplies of services and intangibles for both B2C and B2B supplies. These are summarised in subsections 3A.2.2 and 3A.2.7. In addition, the Guidelines provide a framework for determining when it may be appropriate to adopt a specific rule for determining the place of taxation for both B2C and B2B supplies, as well as a Guideline for services directly connected to immovable property. See subsections 3A.2.8 and 3A.2.9 for further information on specific rules.

### **3A.2.2. Business-to-consumer (B2C) supplies: The main rules for determining the place of taxation**

In theory, implementing the destination principle in the B2C context is straightforward. The objective is simply to tax the final consumption in the jurisdiction where it occurs with the tax burden resting on the final consumer. Accordingly, the primary objective for place-of-taxation rules in the B2C context is to predict with reasonable accuracy the place where the services or intangibles are likely to be consumed while taking into account practical constraints. Ideally, such place-of-taxation rules should be simple and practical for taxpayers to apply, for customers to understand, and for tax administrations to administer.

Achieving this objective for B2C supplies of services was reasonably easy in the past, when consumers typically purchased services from local suppliers, and those supplies generally involved services that could be expected to be consumed in the jurisdiction where they were performed. Consequently, some jurisdictions implemented VAT systems that determined the place of taxation for such services primarily by reference to the supplier's location, on the assumption that this was where these services were normally performed and where final consumers were actually located when consuming the service. The supplier-location rule was often supplemented by a place-of-taxation rule based on place of performance or other proxies, for cases in which the supplier's location was a less reliable indicator of the location where services were likely to be consumed (e.g. entertainment or sporting events). At the same time, other jurisdictions adopted various different approaches for determining the place of taxation for services and intangibles, and, as a consequence, there was a lack of consistency and clarity regarding which jurisdiction should have the right to tax particular supplies of services and intangibles.

As noted above (see subsection 1.4 of Section 1), the emergence of the global economy, with its growing reliance on digital supplies, created further challenges for these traditional approaches to determining the place of taxation for B2C supplies of services and intangibles. Specifically, when services or intangibles can be supplied remotely to customers who may be located anywhere in the world when they consume the service or intangible, a place-of-taxation rule based on the supplier's location or the place of performance is increasingly unlikely to accurately predict the likely place of consumption.

Against this background, the Guidelines recommend two general rules for determining the place of taxation for B2C supplies of services and intangibles, with the applicable rule depending on whether the place of performance bears a close and predictable relationship to the likely place of consumption.

First, the Guidelines propose a general rule for those supplies that they characterise as “on the spot” in nature. These are supplies that are physically performed at a readily identifiable place and that are ordinarily consumed at the same time and place where they are physically performed in the presence of both the person and entity that makes the supply and the person consuming it. For “on the spot” supplies, the Guidelines adopt a place-of-taxation rule based on place of performance, i.e. Guideline 3.5.

Second, the Guidelines propose a general rule for all supplies other than “on the spot” supplies. These are supplies whose consumption bears no necessary relationship to the location in which the supply is performed or in which the supplier is located. For all such other supplies, the Guidelines adopt a place-of-taxation rule based on the customer's usual residence, i.e. Guideline 3.6.

These rules generally result in the allocation of the taxing rights over B2C supplies of services and intangibles to the jurisdiction where it can reasonably be assumed that the final consumer is consuming the supply. This is the place where the final consumer consumes an on-the-spot supply, or the final consumer's usual residence where he or she is presumed to consume a remotely supplied service or intangible.

### **3A.2.3. B2C supplies of services and intangibles that normally cannot be supplied remotely (“on the spot” supplies): Place where the supply is physically performed**

The Guidelines recommend that jurisdictions adopt the “place of performance” as the basis for determining the place of taxation with respect to B2C services or intangibles that are physically supplied and consumed at the same location (“on the spot” supplies).

This recommendation is expressed in Guideline 3.5, which provides that “the jurisdiction in which the supply is physically performed has the taxing rights over B2C supplies of services intangibles” when these supplies:

- Are physically performed at a readily identifiable place, and
- Are ordinarily consumed at the same time as and at the same place where they are physically performed, and
- Ordinarily require the physical presence of the person performing the supply and the person consuming the service or intangible at the same time and place where the supply of such a service or intangible is physically performed.

This recommendation essentially relates to the group of services that generally cannot be supplied remotely (i.e. that generally cannot be supplied online). These are primarily services that are physically performed on the person (e.g. hairdressing, massage, beauty therapy, physiotherapy); restaurant and catering services; entry to cinema, theatre performances, trade fairs, museums, exhibitions, and parks; and attendance at sports competitions.

The place of physical performance of the supply is an appropriate proxy to determine the place of consumption for such supplies. It provides a reasonably accurate indication of their place of consumption and it is simple for suppliers to apply and for tax administrations to administer.

It is recognised that jurisdictions’ existing VAT regimes may often, explicitly by law or implicitly in practice, determine the place of taxation for these types of “on the spot” supplies by reference to the location of their supplier. The application of such a rule based on the supplier’s location for determining the place of taxation of “on the spot” supplies will generally lead to the same result for these supplies as a rule based on the place of performance. These jurisdictions may thus decide to continue their existing approach based on the supplier’s location for determining the place of taxation of “on the spot” supplies. They could then focus their reform on services that can be supplied remotely, such as online supplies of digital services and digital products, which can be supplied by business to consumers anywhere in the world without requiring any physical presence in the consumers’ jurisdiction. The place of performance or the supplier’s location does not provide an appropriate basis for determining the place of taxation of these supplies. This is addressed in the following subsection.

### **3A.2.4. All other B2C supplies of services and intangibles – Including online supplies of services and intangibles: The customer’s usual residence**

For supplies other than “on the spot” supplies, the place of physical performance generally does not provide a good indication of the likely place of consumption. This includes, for example, supplies of services and intangibles that are likely to be consumed at some time other than the time of performance, or for which the consumption and/or performance are likely to be ongoing, as well as services and intangibles that can easily be provided and consumed remotely.

For such B2C supplies of services and intangibles, the place of usual residence of the customer is a more appropriate proxy for the jurisdiction of consumption, as it can be assumed that these types of services and intangibles will ordinarily be consumed in the jurisdiction where the customer has his or her usual residence. Accordingly, Guideline 3.6 provides that “the jurisdiction in which the customer has its usual

residence” has the taxing rights for B2C supplies of services and intangibles that are not “on the spot” supplies.

The “usual residence of the customer” is generally accepted as the most efficient and effective proxy for predicting with reasonable accuracy the place where internationally traded services or intangibles are likely to be consumed. Proxies based on “use”, “enjoyment” or “performance” are considered much less efficient and leading to substantial practical implementation challenges as a basis for determining the place of taxation of internationally traded, and remotely supplied, services and intangibles.

### **3A.2.5. Determining the jurisdiction of the usual residence of the customer for B2C supplies – Recommended criteria and indicia**

This Toolkit recommends the implementation of a rule for determining place of taxation of internationally traded B2C services and intangibles (including services and intangibles supplied online) by reference to the customer’s usual residence.

A customer’s usual residence can generally be presumed to be where the customer regularly lives or has established a home. Customers generally cannot be considered to have their usual residence in a jurisdiction where they are only temporary, transitory visitors (e.g. as a tourist or as a participant to a training course or a conference).<sup>12</sup>

Jurisdictions that adopt the usual residence of the customer as a proxy are encouraged to provide clear and consistent rules for determining the customer’s residence. The rules should incorporate easily identifiable indicia of usual residence and permit non-resident suppliers to rely, as much as possible, on information they routinely collect from their customers in the course of their normal business activity and that can be processed in an automated way insofar as such information provides reasonably reliable evidence of their customers’ place of usual residence.

In general, the information provided to the supplier by the customer may be considered as important evidence for determining the jurisdiction of the customer’s usual residence. This could include information collected within business processes (e.g. the ordering process), such as:

- The customer’s jurisdiction and (billing) address
- The customer’s bank details, such as the location of the bank account used for payment or the address of the customer held by the bank
- The customer’s credit card information, including the credit card Bank Identification Number (BIN)

If necessary, jurisdictions may require that the reliability of the information provided by the customer to the supplier be further supported through appropriate indicia of residence. In some cases, such indicia might be the only indication of the jurisdiction of the customer’s usual residence that the supplier has at its disposal. Particularly, in the context of digital trade where activities typically involve high-volume, low-value supplies that rely on minimal interaction and communication between the supplier and its customer, it often will be difficult to determine the customer’s place of usual residence from an agreement. Also, the available indicia will vary depending on the type of business or product involved. The indicia typically include:

- The contact telephone number

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<sup>12</sup> Jurisdictions that treat supplies to certain businesses (e.g. smaller or certain exempt businesses) as B2C supplies should keep in mind that these businesses are not necessarily natural persons. Consequently, such jurisdictions may have to adapt the concept of usual residence in these cases. The determination of the customer location for B2B supplies as described below (3A.2.7) could be useful in this respect. The same may apply where jurisdictions do not distinguish between B2B and B2C supplies.

- Location of the customer telephone landline through which the service will be supplied
- the Internet Protocol (IP) address<sup>13</sup> of the device used to make the online purchase or to download digital content
- Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used where a customer orders by mobile phone
- The customer's trading history, which could include information on the predominant place of consumption, language of digital content supplied, or other commercially relevant information, such as a loyalty card or subscription numbers

These indicia are likely to evolve over time as technology and business practices develop. Where the IP address is routinely used by the vendor to manage geographical restrictions on intellectual property rights (e.g. when streaming movies or sports events), this may also identify the consumer's location for tax purposes. In this connection, however, it may also be noted that if a purchaser is using a virtual private network (VPN) to mask its IP address or identifying it as active in another jurisdiction, this may lead to an incorrect or non-tax outcome. Therefore, jurisdictions should be aware of the risks of relying entirely on an IP address in identifying the customer's usual residence.

Jurisdictions should provide clear and realistic guidance for suppliers on what is required to determine the place of usual residence of their customers in the B2C context. Tax authorities may wish to consider the following specific approaches:

- Requiring that the supplier evidences its determination of the place of taxation on the basis of two non-contradictory pieces of information/indicia as outlined above. Note, however, that emerging international practice often considers one piece of information sufficient, especially for lower-value transactions.
- Implementing a fallback rule in cases where no or limited reliable information is available.
- Adopting safe harbour rules. Under such a rule, compliant businesses that generally follow the jurisdiction's directives and have made reasonable efforts to do so, should expect challenges only where there is misuse or abuse of the underlying evidence on which they rely.
- Moving from a transaction-based system for determining and validating the usual residence of the customer to a systems-based validation system.
- When a supplier employs geolocation functionality to determine customer location for other purposes (e.g. digital rights limitations associated with certain online media, streaming, and broadcasting), jurisdictions may consider whether this is also acceptable for tax purposes.

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<sup>13</sup> An Internet Protocol address, also known as an IP address, is a numerical label assigned to each device (e.g. computer, mobile phone) participating in a computer network that uses the Internet Protocol for communication.

### Box 3A.1. Example of practical guidance for determining a consumer's usual residence – Australia

The Australian Taxation Office (ATO) provides practical guidance online to non-resident suppliers of services and intangibles on how to determine whether a customer is a consumer resident in Australia. The guidance provides businesses with a substantial freedom to determine a consumer's residence in a way that best suits their own business model, processes, and systems.

The ATO permits two main approaches that it categorises as a 'business systems' and a 'reasonable steps' approach. **The business systems approach** involves non-resident suppliers forming a judgment based on all of the information they routinely collect as part of their normal business systems and processes. This includes, among other items, information such as the customer's billing address, bank account and payment card details that show the geographical location of the issuing financial institution, IP address, and country code on a mobile phone SIM card. For businesses that make supplies using fully automated systems, the expectation is that they produce two pieces of non-contradictory evidence demonstrating that a potentially in-scope consumer is not an Australian resident.

There is no fixed hierarchy that the ATO applies to these indicia, but in all cases, businesses should take due account of the quality and reliability of the available information. They should prioritise those pieces of information that are essential for a commercial transaction to proceed (e.g. debit card details) over pieces of information that a business records only for tax or intelligence gathering purposes (e.g. consumers' home address, which they never face a requirement to update even when they move to live in another country).

If information from business systems does not produce a definitive conclusion, then businesses have the freedom to adopt **a reasonable steps approach** that draws on any other personal information they acquire from the customer through interactions during the sales process. Non-resident suppliers may also rely on conclusions they have reached about a customer's residence in another jurisdiction if that jurisdiction has rules similar to Australia's for determining residence for VAT purposes (e.g. New Zealand, Norway, EU Member States).

Readers can consult the ATO guidance on determining the status and residency of Australian consumers at <https://www.ato.gov.au/Business/International-tax-for-business/GST-on-imported-services-and-digital-products/Terms-we-use/#Australianconsumers>

A legally binding ruling from the Commissioner of the Australian Taxation Office, *GSTR 2017/1*, forms the basis for the ATO's online guidance and readers can view this ruling at

<https://www.ato.gov.au/law/view/document?DocID=GST/GSTR20171/NAT/ATO/00001&Pit=99991231235958#ft18>

Source: Australian Taxation Office.

Any guidance provided by the tax authorities will need to take account of the law and practice in their respective jurisdictions, including guidance regarding the protection of personal privacy, while maintaining flexibility for businesses.

#### **3A.2.6. Implementing a place-of-taxation rule by reference to the customer's usual residence – Specific observations for jurisdictions in the LAC region**

A number of jurisdictions in the LAC region follow an approach by reference to the customer's usual residence explicitly for remote supplies of service and intangibles, or for selected categories of these supplies focusing especially on digital services and digital products, while others implicitly follow its logic in applying VAT to internationally traded services.

A number of LAC jurisdictions have included explicit reference to the customer's usual residence as the place of taxation for B2C international supplies of services and intangibles in their primary legislation. For example, Colombian legislation considers that the place of taxation of supplies of services or intangibles

is in Colombia “when the user or recipient has its fiscal residency, domicile, permanent establishment or principal center of business in Colombia”. Similarly, the place of taxation of supplies of digital services is considered to be in Ecuador under its VAT law when such services are “used or consumed by a resident or permanent establishment” within the country. Such legal provisions are typically complemented with further guidance in secondary legislation and/or administrative guidance. The additional guidance typically provides further detailed indicia for suppliers to use in determining and evidencing their customers’ usual residence in practice (see above).

In practice, it may not always be possible for jurisdictions to include such an explicit reference in the primary legislation itself, particularly when reform of the existing legal framework may be challenging or complex and time consuming, e.g. for legal or political economy reasons. These jurisdictions may then rely exclusively on secondary legislation or administrative guidance, where appropriate, to implement a place-of-taxation rule by reference to the customer’s usual residence. This requires, in principle, a rule in the jurisdiction’s VAT law that determines the place of taxation for internationally traded services and intangibles in accord with the destination principle, typically by reference to the place where the service or intangible is “used”, “enjoyed”, or “consumed”. The secondary legislation or administrative guidance then typically provides that the targeted services or intangibles (usually digitally supplied services and products) are considered “used”, “enjoyed”, or “consumed” in the jurisdiction where the customer has its usual residence. Such guidance can be complemented with further guidance on indicia for determining the customer’s usual residence. Several LAC jurisdictions simply include a reference in secondary legislation or in administrative guidance to a number of indicia on the basis of which the targeted services or intangibles are deemed to be “used”, “enjoyed”, or “consumed” in the country. These indicia typically include the customer’s phone number, the IP address of the device used by the customer, the language, the digital content, etc. See Table 3A.1 below.

**Table 3A.1. Approaches for identifying customers’ jurisdiction of usual residence adopted in selected LAC jurisdictions**

| Jurisdiction     | Proxy   | Complementary provisions/Indicia   |
|------------------|---|--|
| <b>Argentina</b> | In-scope supplies (digital services) are taxable provided they are <i>used or exploited</i> in Argentina. <sup>1</sup>  | Primary legislation.<br><br>Supplies are deemed as used or exploited in Argentina if <sup>2</sup> : <ul style="list-style-type: none"> <li>• The IP address or SIM card indicate a connection to Argentina.</li> <li>• The billing address is in Argentina, or</li> <li>• The bank account or other payment details can be identified with Argentina.</li> </ul> |
| <b>Bahamas</b>   | In-scope supplies (telecommunication services and electronic commerce) are taxable in Bahamas provided they are for the use, enjoyment, benefit or advantage of persons within the country. | None identified.   |
| <b>Chile</b>     | In-scope supplies (certain electronic services) are taxable in Chile provided they are <i>performed or used</i> within the country. <sup>3</sup>  | Primary legislation.<br><br>The supply is deemed to be used in Chile if two of the following elements indicate a connection to Chile: <sup>4</sup> <ul style="list-style-type: none"> <li>• IP address or other geolocation</li> </ul>   |

| Jurisdiction      | Proxy  | Complementary provisions/Indicia   |
|-------------------|--|--|
|                   |  | method <ul style="list-style-type: none"> <li>• Country where the payment method was issued (e.g. credit card)</li> <li>• Billing or shipping address provided</li> <li>• SIM card with Chile country code</li> </ul>  |
| <b>Costa Rica</b> | Primary legislation provides that supplies are taxable in Costa Rica provided they take place in the country. <sup>5</sup> Secondary legislation provides that a service takes place in the country if it is carried out or consumed in Costa Rica. <sup>6</sup> | Administrative guidance.<br><br>The Costa Rican Tax Administration has set forth that a service is consumed in Costa Rica when: <sup>7</sup> <ol style="list-style-type: none"> <li>a) The address where the service is delivered corresponds to Costa Rica.</li> <li>b) The underlying supplier of an intermediated service is based in Costa Rica.</li> <li>c) The fixed landline of the customer corresponds to Costa Rica.</li> <li>d) The IP address of the device where the product, service or intangible is acquired or downloaded corresponds to Costa Rica.</li> <li>e) The mobile country code (MCC) of the international mobile subscriber identity (IMSI) stored in the subscriber identity module (SIM) card of the mobile device used by the customer corresponds to Costa Rica.</li> <li>f) The address of the customer is located in Costa Rica República.</li> <li>g) The bank account used for settlement or the address registered before the bank that takes part in the settlement is located in Costa Rica.</li> <li>h) Any other information in the possession of the supplier or intermediary that allows to reasonably identify the place of consumption.</li> </ol> In case of conflict, alphabetical order priority applies. |
| <b>México</b>     | Supplies are taxable provided the recipient (customer) is located within the country. <sup>8</sup>   | Primary legislation.<br>The recipient is deemed to be located in Mexico if any of the following conditions is met: <sup>9</sup> <ul style="list-style-type: none"> <li>• The address indicated by the recipient is located in Mexico.</li> <li>• Use, for settlement purposes, of a financial intermediary based in Mexico.</li> <li>• The IP address of the device used to purchase the digital services corresponds to Mexico, or</li> <li>• The phone number provided corresponds to Mexico.</li> </ul>   |

1,2. Argentinian VAT Act (*Ley de Impuesto al Valor Agregado*), article 1.

3,4. Chilean VAT Act (*Ley sobre impuesto a las ventas y servicios*), Article 5.

5. Costa Rican VAT Act (*Ley de Impuesto al Valor Agregado*), article 1(2)(c)(ii).

6. Regulations to the VAT Act of Costa Rica (*Reglamento de la Ley de Impuesto al Valor Agregado*), article 3.
  7. Resolution DGT-R-13-2020 of the General Directorate of Taxation of Costa Rica.
  8. Mexican VAT Act (*Ley del Impuesto al Valor Agregado*), Art. 18-C.
  9. Mexican VAT Act (*Ley del Impuesto al Valor Agregado*), Art. 18-C (I to IV).
- Source: OECD research.

It is important to note, however, that reliance exclusively on specified material elements or indicia to determine the place of taxation rather than using the general principle of usual residence itself may lead to uncertainties or incorrect or highly debatable determinations in situations where a range of other evidence would contradict the place of taxation determined by the jurisdiction's preferred indicia. For example, this would be the case if a jurisdiction were to require businesses to prioritise the country in which the consumer's mobile telecommunications provider registered its Subscriber Identification Module (SIM) card, while the billing address and IP address of the mobile device on which the consumer made the purchase identify another country.

In the interest of legal certainty and transparency, it is recommended that jurisdiction include a clear proxy for determining the place of taxation by reference to the customer's usual residence in the 'primary' legislation whenever possible. Where legislation continues to include proxies based on "use", "enjoyment" or "performance", these could be ring-fenced to apply to on-the-spot supplies or to circumstances where the place for such "use", enjoyment" or "performance" is readily identifiable. These specific rules can be complemented with a place-of-taxation rule by reference to the customer's usual residence for other supplies of services and intangibles that can be delivered from a remote location and that, due to the nature of their performance or delivery, are difficult or impossible to link to a specific physical location.

A clear determination in the law for the place of taxation by reference to the customer's usual residence enhances international consistency. International consistency reduces risks of non-taxation or involuntary non-taxation while at the same time also leading to higher levels of compliance and reducing risks of tax avoidance or tax minimisation caused by difficulties to apply or obsolete proxies. The adoption of a clear-and-easy-to-apply proxy also provides more certainty for tax administrations and exporters of such services to apply the zero-rating to outbound supplies.

### **3A.2.7. Place of taxation for business-to-business (B2B) supplies – The customer's location as the main rule for determining the place of taxation**

#### **(i) Introduction**

Under the destination principle, the Guidelines assign taxing rights associated with internationally traded services and intangibles to the "jurisdiction of consumption". In the B2B context, however, the taxes under consideration do not involve taxes on the final consumption at which the VAT is ultimately directed. Rather, they involve taxes associated with the staged collection process *leading, in principle, to a tax on final consumption by individuals* in the jurisdiction of consumption. See subsection 3A.2.1.(i). Accordingly, in the context of internationally traded B2B supplies of services and intangibles, the place-of-taxation rules should facilitate the ultimate objective of the tax, by adopting rules that facilitate the imposition of a tax burden on the final consumer by the jurisdiction of consumption while maintaining neutrality within the VAT system.

#### **(ii) The customer location rule**

To implement the goal of facilitating the imposition of the ultimate tax burden in the jurisdiction of consumption, Guideline 3.2 assigns the taxing rights over internationally traded B2B supplies of services and intangibles to the "jurisdiction in which the customer is located". The assumption underlying the customer location rule for determining the jurisdiction of taxation in connection with international B2B

supplies of services and intangibles is that it constitutes the appropriate proxy for the jurisdiction of business use, where the business customer will use its purchases to create services or intangibles for final consumers. As such, it facilitates the flow-through of the tax burden to final consumers, thereby implementing the destination principle.

### ***(iii) Guidance for implementing the customer location rule***

“How does one determine the jurisdiction in which the customer is located”? The answer to the question depends on the answer to two subsidiary questions: “Who is the customer”? and “Where is the customer located”? The answer to the first question, according to Guideline 3.3 “is normally determined by reference to the business agreement”. A “business agreement” is not a formal legal concept, but simply embodies the elements that permit one to identify the parties to a supply and the obligations with respect to that supply. Once the customer is determined, the customer’s location is also determined for an entity with a single location (a “single location entity” or “SLE”). The customer’s location is where the customer has located its permanent business presence. If a customer has establishments in more than one jurisdiction (a “multiple location entity” or “MLE”), the inquiry into the MLE’s customer location for a supply of a service or intangible is more complicated.

When a supply is made to an MLE, the place of taxation cannot be determined simply by looking to the location of the business presence of the customer identified in the business agreement, as in the case of SLEs. Instead, under Guideline 3.4, an additional inquiry must be undertaken to determine the jurisdiction (or jurisdictions) in which the MLE’s establishment (or establishments) uses the service or intangible, because it is the location of business use that determines the place of taxation for B2B supplies of services and intangibles. In this connection, it is important to keep in mind that an MLE is a *single legal entity*, albeit one with multiple locations or branches, and the Guidelines’ suggested place-of-taxation rules for MLEs are addressed only to what might be characterised as intra-entity or branch-to-branch supplies. When supplies are purchased by one *legal entity* for the benefit of a related *legal entity or entities* (e.g. when a centralised purchasing company acquires auditing services for a multinational enterprise with subsidiaries around the world), the place-of-taxation rule for each supply to each legal entity is determined in accordance with the business agreement applicable to the supply to such legal entity.

The Guidelines identify three approaches to determining the establishment of an MLE that is regarded as using a service or intangible and where the establishment is located:

- The “direct use” approach, which focuses directly on the establishment that uses the service or intangible.
- The “direct delivery” approach, which focuses on the establishment to which the service or intangible is delivered.
- The “recharge method”, which focuses on the establishment that uses the service or intangible as determined on the basis of internal recharge arrangements within the MLE, made in accordance with corporate tax, accounting or other regulatory requirements.

Each of the approaches may have its merits in particular circumstances and the Guidelines elaborate upon each one of these in detailed Commentary.

### **3A.2.8. Specific rules for determining the place of taxation for certain supplies of services and intangibles**

#### ***(i) Overview***

The Guidelines recognise that the general place-of-taxation rules for international B2B and B2C supplies of services and intangibles may not identify an appropriate place of taxation in all circumstances and that more targeted rules might be more likely to identify an appropriate place of taxation for some specifically

defined circumstances. In response to this possibility, it is noteworthy what the Guidelines do *not* do. The Guidelines do not undertake to provide tax administrations with a list of specific place-of-taxation rules for application in particular circumstances where such rules might be regarded as superior to the “general” alternative. In part, this reflects the recognition that the Guidelines represent “soft law,” and that it is neither feasible nor desirable to provide more prescriptive instructions on what should be the outcome of the evaluation for all supplies of services and intangibles. Therefore, the Guidelines do not provide any strict limitations as to when it may be appropriate to adopt a specific rule but rather an evaluation framework for assessing their desirability.

***(ii) Evaluation framework for assessing the desirability of a specific rule***

For the reasons suggested in the preceding paragraph and with the notable exception of supplies related to immovable property (see subsection 3A.2.9), the Guidelines provide a framework for evaluating the desirability of a specific place-of-taxation rule rather than recommending a set of specific place-of-taxation rules for circumstances in which the general rule for international supplies of services and intangibles may lead to an inappropriate result.

Guideline 3.7 provides that the taxing rights over international trade in B2B or B2C supplies of services and intangibles may be allocated by proxies other than those identified in the general rules for allocating such rights (see subsections 3A.2.8 and 3A.2.9) when the allocation of taxing rights by reference to the general rules do not lead to an appropriate result under the criteria of (i) neutrality, (ii) efficiency of compliance and administration, (iii) certainty and simplicity, (iv) effectiveness, and (v) fairness, *and, in addition*, a proxy other than that identified by the general rules would lead to a significantly better result when considered under the same criteria.

The Guidelines explicitly state their intention that use of specific rules should be limited to the greatest extent possible. There is a good reason for this limitation, namely, that the existence of specific rules will increase the risk of differences in interpretation and application between jurisdictions and thereby increase the risks of double taxation and unintended non-taxation.

Although Guideline 3.7 does not explicitly identify the types of supplies of services or intangibles, nor the particular circumstances or factors, for which a specific rule might be justified, the Guidelines’ explanatory material offers examples of circumstances where a specific rule may be desirable in both the B2B and B2C contexts. In the B2B context, where the only “general” rule is the customer’s location, the Guidelines suggest that the “general” place-of-taxation rule for on-the-spot B2C supplies might be appropriate as a special place-of-taxation rule for on-the-spot B2B supplies. Adoption of the same rule for on-the-spot supplies for both B2B and B2C supplies would relieve businesses supplying such services (e.g. restaurant services or access to events) of the compliance burden of having to distinguish between final consumers and businesses when making their taxing decisions under the general rules. Such a special rule might thereby lead to a significantly better result by comparison to the application of the general rule under the criteria of efficiency, certainty, simplicity, etc.

In the B2C context, the Guidelines identify international transport as a candidate for a special rule because the general rule of physical performance for on-the-spot supplies might lead to an inappropriate result when measured by the criteria of efficiency, certainty, and simplicity, given the fact that the service is performed in multiple jurisdictions. Similarly, the Guidelines suggest that the general rule of the customer’s usual residence for other than on-the-spot supplies might lead to an inappropriate result for services and intangibles that are performed at a readily identifiable location and require the physical presence of the person consuming the supply but not the physical presence of the person performing it (e.g. the provision of Internet access in an Internet café or a hotel lobby or the access to television channels for a fee in a hotel room). In such cases, a special rule based on the actual location of the customer at the time of the supply might be a better proxy for predicting actual consumption and for administering the VAT than a rule based on the customer’s usual residence.

### **3A.2.9. Supplies of services and intangibles directly connected with immovable and with movable property**

Guideline 3.8 provides that for internationally traded supplies of services and intangibles directly connected with immovable property, “the taxing rights may be allocated to the jurisdiction where the immovable property is located”. This reflects and recognises the reality that many VAT regimes have directly or indirectly embraced place-of-taxation rules for services and intangibles based on the location of immovable property.<sup>14</sup>

The Guidelines identify two categories of services or intangibles directly connected with immovable property regarding which it is reasonable to assume that the specific rule would lead to a significantly better result than the relevant general rule under the evaluation criteria of Guideline 3.7:

- The transfer, sale, lease or the right to use, occupy, enjoy or exploit immovable property; and
- Supplies of services that are physically provided to the immovable property itself, such as constructing, altering and maintaining the immovable property.

For other supplies of services and intangibles directly connected with immovable property, namely, those with a very close, clear and obvious link or association between the supply and the immovable property, the Guidelines suggest that further evaluation under Guideline 3.7 would be required before the propriety of adopting the specific rule could be determined. These other services and intangibles would include services that are not physically performed on immovable property, but that relate to clearly identifiable, specific immovable property, such as architectural services.

The Guidelines do not present a specific place-of-taxation rule for supplies of services or intangibles connected to movable tangible property analogous to the rule in Guideline 3.8 with respect to immovable property. Nevertheless, with respect to B2C supplies of services and intangibles connected with movable property, such as repairing, altering, or maintaining the property, the Guidelines acknowledge that jurisdictions may want to consider adoption of a place-of-taxation rule based on the location of movable tangible property. Such an approach would, according to the Guidelines, provide a reasonably accurate reflection of the place where the consumption of the services or intangibles is likely to take place and is relatively straightforward for suppliers to apply in practice.

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<sup>14</sup> The qualifying phrase “directly or indirectly” is intended to recognise the distinction between those VAT regimes that have adopted specific place-of-taxation rules for particular types of supplies of services and intangibles, including those relating to immovable tangible property, e.g. in the European Union (the place of supply for services “connected with immovable property” is “the place where the immovable property is located”) and VAT regimes (like Australia’s and New Zealand’s) that often reach a similar conclusion based on an “iterative” approach to determining the appropriate place of taxation.

### 3A.3. Establishment of effective collection mechanisms

#### Key messages

**What are effective collection mechanisms?** At its most basic, for VAT collection on international digital trade, an effective collection mechanism is a regime that is simple to administer and to comply with for a non-resident business with the appropriate safeguards to protect VAT revenues for tax authorities and that accordingly maximises the VAT revenues that jurisdictions generate.

**The OECD Collection Mechanisms Report** provides detailed advice to jurisdictions on how to develop effective collection mechanisms for international supplies of services and intangibles. It presents different approaches to B2C and B2B supplies, reflecting current practice in many VAT systems worldwide. It recognises, however, that VAT systems may also choose not to differentiate between B2B and B2C supplies and considers solutions in light of such a policy design.

The Collection Mechanisms Report is the basic reference source for the analysis and guidance presented in this subsection 3A.3. It is complemented with “lessons learned” from the experience from the growing number of jurisdictions worldwide that have already implemented this guidance. The advice in subsection 3A.3 concentrates primarily on the policy decisions and design elements for the building of the administration and operational infrastructure for effective collection mechanisms. Section 4 of this Toolkit provides detailed practical guidance on the building of this administration and operational infrastructure.

**Prior establishment of taxing rights over internationally traded services and intangibles in line with the International VAT/GST Guidelines.** This guidance on the establishment of effective collection mechanisms assumes that jurisdictions have implemented, or intend to implement, the OECD recommendations for the establishment of taxing rights for VAT on international B2C supplies of services and intangibles. For further explanation of what this means in practice, please refer to subsection 3A.2 and the guidance on designing legislation in Checklist 1 at Section 6 of the Toolkit.

**A simplified registration and collection regime is the recommended solution for the effective collection of VAT on business-to-consumer (B2C) services and intangibles supplied by a non-resident business.**

- Under this regime, non-resident suppliers are required by law to register for VAT in the jurisdiction where their customer (private consumer) has its usual residence and remit the VAT in that jurisdiction at the VAT rate in accordance with the rules of that jurisdiction.
- OECD guidance recommends that jurisdictions facilitate compliance for non-resident suppliers by implementing a simplified VAT registration and collection regime (“simplified compliance” regimes for short) for these suppliers to settle their VAT obligations with relatively limited costs for tax administration.
- Such a simplified compliance regime is ideally based on relatively basic electronic processes, which have become increasingly accessible for most tax administrations including those with limited administrative capacity, and limits compliance obligations to what is strictly necessary for the effective collection of the VAT.

**A reverse charge mechanism is recommended for the effective collection of VAT on business-to-business (B2B) supplies of services and intangibles by a non-resident business, where it is consistent with the jurisdiction’s overall VAT design.**

- Under the reverse charge mechanisms, the liability to pay the VAT is shifted from the non-resident supplier to the business customer in the jurisdiction where it is located.

- The non-resident supplier is then relieved of the requirement to register for VAT on these supplies to business customers in the jurisdiction where these business customers are located.

**Option to access and follow standard VAT registration and collection processes.** Some non-resident suppliers may have a legitimate need to register under the traditional, standard VAT registration regime for international supplies, e.g. to recover VAT incurred in the jurisdiction of registration. Jurisdictions may wish to permit such suppliers to register in this way, although tax authorities may consider it prudent to conduct enhanced due diligence and validation checks upon them before providing authorisation.

**Potential for extending simplified compliance regimes to goods.** This subsection 3A.3 discusses simplified compliance regimes in the context of B2C supplies of services and intangibles by non-resident suppliers. Jurisdictions can in principle extend the scope of such a regime for the collection of VAT to other forms of international B2C trade. This includes imports of low-value goods from online sales, i.e. goods that are sold online by a non-resident business and imported into a jurisdiction for delivery to the customer (with a value below the jurisdiction's customs relief threshold). Section 3B of the Toolkit analyses distinct elements of the possible integration of these regimes into a policy framework for such supplies of low-value goods.

**Alternative collection mechanisms for international B2C supplies of services and intangibles:** Some jurisdictions have explored, or are exploring, the potential of financial intermediary-led withholding regimes as an alternative to collection obligations for non-resident suppliers. As Annex B sets out in detail, this Toolkit does not advise jurisdiction to pursue such regimes as a primary mechanism for collecting VAT on supplies by non-resident businesses. However, such regimes could serve as a useful fallback mechanism to address persistently non-compliant, non-resident businesses that refuse to register and collect VAT on sales into a jurisdiction.

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### 3A.3.1. Collection of VAT where the supplier is not located in the jurisdiction of taxation

The Guidelines recognise the particular challenges associated with the effective collection of VAT on supplies of services and intangibles “where the supplier is not located in the jurisdiction of taxation”<sup>15</sup>, i.e. a non-resident supplier upon whom the jurisdiction of taxation may have limited or no authority to effectively enforce a collection obligation. In the context of business-to-business (B2B) supplies of services and intangibles by non-resident suppliers, the OECD guidance recommends adoption of the “reverse charge” mechanism when this is consistent with the design of the national consumption tax system, including where a jurisdiction’s VAT regime distinguishes between B2B and B2C supplies. The design and operation of a

<sup>15</sup> The references to circumstances “where the supplier is not located in the jurisdiction of taxation” is embodied in the official title of the Collection Mechanisms Report and is used in the Guidelines and other OECD guidance to refer to cases “where the jurisdiction of taxation may have limited or no authority effectively to enforce a collection obligation upon the supplier”. See Collection Mechanisms Report “Glossary of terms”.

reverse mechanism for B2B supplies of services and intangibles is discussed in further detail in 3A.3.3 below.

It is generally recognised, however, that the reverse charge mechanism does not offer an appropriate solution for collecting VAT on business-to-consumer (B2C) supplies of services and intangibles from non-resident suppliers. The international consensus as reflected in the OECD guidance is that requiring non-resident suppliers to register and account for the VAT in the jurisdiction of taxation is the most effective and efficient approach to ensure the appropriate collection of VAT on international B2C supplies of services and intangibles. Compliance by non-resident suppliers with such a requirement should be facilitated by making it as simple as possible to comply through the implementation of simple or simplified VAT registration and collection measures for these non-residents. Detailed guidance for the policy design of such a simple or simplified compliance regime for non-resident suppliers of services and intangibles is provided in the subsections 3A.3.4 to 3A.3.5.

### **3A.3.2. The challenge of applying a standard supplier registration and collection regime to suppliers that are not located in the jurisdiction of taxation**

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

Jurisdictions may possess the *legal* power to require suppliers, whether resident or non-resident, to comply with VAT registration and collection obligations. When the supplier is not located in the jurisdiction of taxation, jurisdictions may nevertheless lack the ability to effectively *enforce* these tax obligations upon the supplier. The challenges for tax administrations in the jurisdiction of taxation may include establishing that the non-resident supplier has made supplies that are subject to VAT in their jurisdiction; enforcing collection and remittance of tax by non-resident suppliers and follow-up enforcement actions such as accessing books and records; and creating auditing and collection procedures for outstanding taxes. As international trade in services and intangibles continues to grow, tax administrations may need to deal with increasingly large numbers of foreign businesses that have no physical presence in their jurisdiction.

The obligation for suppliers to register and account for VAT in a jurisdiction where they are not located may create challenges for such suppliers. These may be burdensome for large enterprises and even more so for small-and-medium-sized enterprises (SMEs), particularly when such requirements arise in multiple jurisdictions. In addition to familiarising themselves with the general obligations associated with VAT registration and return preparation (including VAT legislation, tax authority guidance, case law, and human and technical resources), non-resident suppliers must successfully navigate a wide variety of other potential specific obligations as outlined in Box 3A.2 below.

### Box 3A.2. Obligations that typically result from a standard VAT registration requirement for a non-resident business

- Obtaining information about the local VAT registration process and the VAT return itself in a language that can be understood.
- Understanding local rules regarding appointment of a fiscal representative and appointing a representative, if necessary.
- Arranging a bank guarantee and/or opening a bank account, if required.
- Understanding how to differentiate between B2B and B2C supplies if different rules apply to each category of supplies.
- Understanding how thresholds (wherever applicable) operate.
- Understanding the applicable collection mechanisms.
- Understanding the VAT rate(s) applicable in the jurisdiction in question and implementing systems changes required to cope with charging the local VAT rate(s).
- Understanding invoicing rules and amending IT systems accordingly.
- Understanding local rules on a range of complex and often very specific VAT issues, such as time limits and procedures for making corrections.
- Understanding special rules, if any, addressed to small suppliers.
- Storing and retaining documents in accord with local legislation.
- Actively monitoring legislative and administrative updates, which may require business and systems changes.
- Dealing with tax audits and taking advice and obtaining local support where necessary.
- Dealing with disputes, foreign court systems (including acquisition of knowledge of time limits, procedures and protocols).
- Understanding the interaction with other taxes and rules in the local jurisdiction.

### 3A.3.3. Collection of VAT on international B2B supplies of services and intangibles: The “reverse charge” mechanism

For collection of VAT on international B2B supplies of services and intangibles at the customer’s location, the Guidelines generally recommend that the customer be liable to account through the use of the “reverse charge” (or “self-assessment”) mechanism when this is consistent with the design of the national consumption tax system. See also subsections 3A.2.1.(i) and Annex A. Under the reverse charge mechanism, the customer accounts for any tax due in its jurisdiction and thereby relieves the supplier of any obligation to be identified for VAT purposes or to account for tax in the customer’s jurisdiction. The customer typically achieves this by declaring the VAT due on the supply received from the non-resident supplier as output tax on the relevant VAT return. The rate to be applied is the rate applicable in the customer’s jurisdiction. The customer is then entitled to input tax deduction to the extent allowed under the rules of its jurisdiction.

The adoption of the reverse charge mechanism has a number of advantages in the context of international B2B supplies. First, the tax authority in the jurisdiction of the business customer can verify and ensure compliance since that authority has personal jurisdiction over that customer. Second, the compliance burden is largely shifted from the supplier to the customer and is minimised since the customer has full access to the details of the supply. Third, the compliance burden and administrative costs are also lower

because the supplier is not required to comply with tax obligations in the customer's jurisdiction (e.g. VAT identification, audits, which would otherwise have to be administered, and translation and language barriers). Finally, it reduces the revenue risks associated with the collection of tax from non-resident suppliers, whether or not that supplier's customers are entitled to deduct the input tax.

Tax administrations that adopt the reverse charge mechanism are encouraged to make domestic businesses aware of the need to account for any tax on services and intangibles purchased from their suppliers in other jurisdictions. If the customer is entitled to full input tax credit in respect of this supply, it may be that domestic VAT legislation does not require the reverse charge to be declared on the domestic VAT return. In any event, tax administrations are encouraged to clearly prescribe the obligations of business purchasers under their respective reverse charge mechanisms.

#### **3A.3.4. Collection of VAT on international B2C supplies of services and intangibles: A simplified VAT registration and collection regime for non-resident suppliers**

The most effective and efficient approach to ensure the appropriate collection of VAT on international B2C supplies is to require the non-resident supplier to register and account for the VAT in the jurisdiction of taxation. When implementing such a registration-based collection mechanism for non-resident suppliers, it is recommended that jurisdictions establish a simple or simplified registration and collection regime ("simplified compliance" regime in short) to facilitate compliance for non-resident suppliers.

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

In some respects, simplified compliance regimes for non-resident suppliers offer the most obvious option for facilitating effective collection of VAT on international supplies of services and intangibles. First, these regimes follow the basic approach to the staged collection process that lies at the heart of VAT administration, namely, collection by the supplier from the customer. At the same time, they recognise the burden for suppliers of complying with VAT laws in multiple jurisdictions and so facilitate the staged collection process through significantly reduced administrative obligations for businesses. Second, for those regimes that do not distinguish between B2B and B2C transactions, simplified compliance regimes offer an approach that can be applied to all international supplies of services and intangibles without requiring jurisdictions to create separate regimes for B2B and B2C supplies. This avoids the difficulties for non-resident suppliers of having to distinguish between businesses and consumers in complying with the country's VAT regime. Third, at least for B2C supplies, it is not clear that there is a better alternative. Customer collection by household consumers does not appear to be a viable option at all for services and intangibles.

The Collection Mechanism Report, which was issued shortly after the formal approval of the Guidelines, specifically addresses the key policy and design considerations, as well as practical implementation concerns, associated with the adoption of registration-based VAT collection mechanisms for suppliers that are not located in the jurisdiction of taxation.

*(i) Recommended administrative design features*

The simplified compliance regime may operate separately from the traditional registration and collection regime, without the same rights (such as input tax recovery) or obligations (such as full reporting) as in a traditional regime. In order to assist taxing jurisdictions in evaluating and developing a simplified compliance regime, OECD guidance identifies the main features of such a regime as outlined in Table 3A.2 below, balancing the need for simplification and the need of tax administrations to safeguard the revenue. Section 4C discusses the administrative and operational aspects of such a regime in more detail.

**Table 3A.2. Main features of a simplified registration and collection regime for non-resident suppliers**

|  |   |
|--|---|
| <p><b>Registration procedure</b></p>       | <ul style="list-style-type: none"> <li>• The information requested may be limited to necessary details, which could include:               <ul style="list-style-type: none"> <li>○ Name of business, including the trading name</li> <li>○ Name of contact person responsible for dealing with tax administrations</li> <li>○ Postal and/or registered address of the business and its contact person</li> <li>○ Telephone number of contact person</li> <li>○ Electronic address of contact person</li> <li>○ Web sites URL of non-resident suppliers through which business is conducted in the taxing jurisdiction</li> <li>○ National tax identification number, if such a number is issued to the supplier in the supplier's jurisdiction to conduct business in that jurisdiction</li> </ul> </li> <li>• The simplest way to engage with tax administrations from a remote location is by electronic processes. An online registration application could be made accessible on the home page of the tax administration's website, preferably available in the languages of the jurisdiction's major trading partners.</li> <li>• Jurisdictions should not make the appointment of a local fiscal representative compulsory under a simplified compliance regime for non-resident suppliers, unless there are exceptional circumstances for doing so.</li> <li>• As the Guidelines point out, a registration for VAT purposes by itself does not constitute an establishment for the purposes of the recommended policy framework.</li> </ul> |
| <p><b>Input tax recovery (refunds)</b></p> | <ul style="list-style-type: none"> <li>• Taxing jurisdictions may limit the scope of a simplified registration and collection regime to the collection of VAT on B2C supplies of services and intangibles by non-resident suppliers without making the recovery of input tax available under the simplified regime.</li> <li>• Input tax recovery can remain available for non-resident suppliers under the normal VAT refund or registration and collection procedure.</li> </ul>  |
| <p><b>Return procedure</b></p>             | <ul style="list-style-type: none"> <li>• As requirements differ widely among jurisdictions, satisfying obligations to file tax returns in multiple jurisdictions is a complex process that often results in considerable compliance burdens for non-resident suppliers.</li> <li>• Tax administrations may consider authorising non-resident businesses to file simplified returns, which would be less detailed than returns required for local businesses that are entitled to input tax credits. In establishing the requirements for information under such a simplified approach, it is desirable to strike a balance between the businesses' need for simplicity and the tax administrations' need to verify whether tax obligations have been correctly fulfilled. This information could be confined to:               <ul style="list-style-type: none"> <li>○ Supplier's registration identification number</li> <li>○ Tax period</li> </ul> </li> </ul>  |

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>○ Currency and, where relevant, exchange rate used</li> <li>○ Taxable amount at the standard rate</li> <li>○ Taxable amount at reduced rate(s), if any</li> <li>○ Total tax amount payable</li> </ul> <ul style="list-style-type: none"> <li>● The option to file electronically in a simple and commonly used format is essential to facilitating compliance.</li> <li>● Tax administrations should consider limiting the mandatory reporting period to a quarterly frequency if this presents no significant compliance risks.</li> </ul>  |
| <b>Payments</b>                             | <ul style="list-style-type: none"> <li>● Use of electronic payment methods is recommended, allowing non-resident suppliers to remit the tax due electronically from abroad.</li> <li>● Jurisdictions could consider accepting payments in the currencies of their main trading partners.</li> </ul>   |
| <b>Record-keeping</b>                       | <ul style="list-style-type: none"> <li>● Jurisdictions are encouraged to allow the use of electronic record-keeping systems and remote storage outside the jurisdiction.</li> <li>● Jurisdictions may limit the data to be recorded to what is required to satisfy themselves that the tax for each supply has been charged and accounted for correctly and relying as much as possible on information that is available to suppliers in the course of their normal business activity.</li> <li>● This may include the type of supply, the date of the supply, the VAT payable and the information used to determine the place where the customer has its usual residence.</li> <li>● Taxing jurisdictions may require these records to be made available on request within a reasonable delay.</li> </ul>  |
| <b>Invoicing</b>                            | <ul style="list-style-type: none"> <li>● Jurisdictions may consider eliminating invoicing requirements for business-to-consumer supplies that are covered by the simplified registration and collection regime, in light of the fact that the customers involved generally will not be entitled to deduct the input VAT paid on these supplies.</li> <li>● If invoices are required, jurisdictions may consider allowing invoices to be issued in accordance with the rules of the supplier's jurisdiction or accepting commercial documentation that is issued for purposes other than VAT (e.g. electronic receipts).</li> <li>● It is recommended that information on the invoice remain limited to the data required to administer the VAT regime (such as the identification of the customer, type and date of the supply(ies), the taxable amount and VAT amount per VAT rate and the total taxable amount). Jurisdictions may consider allowing this invoice to be submitted in the language of their main trading partners.</li> <li>● Jurisdictions may also consider options for addressing the practical challenges that existing consumer protection laws could create for non-resident suppliers where they require suppliers to display VAT-inclusive pricing on their website at all stages of the online shopping experience, i.e. including pre-checkout.</li> </ul> |
| <b>Availability of information</b>          | <ul style="list-style-type: none"> <li>● 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.</li> <li>● Jurisdictions are also encouraged to make accessible via the Internet the relevant and up-to-date information that non-resident businesses are likely to need in making their tax determinations. In particular, this would include information on tax rates and product classification.</li> </ul>   |
| <b>Use of third-party service providers</b> | <ul style="list-style-type: none"> <li>● Compliance for non-resident suppliers can be further facilitated by allowing such suppliers to appoint a third-party service provider to act on their behalf in carrying out certain procedures, such as submitting returns.</li> </ul>  |

- This can be especially helpful for small and medium enterprises and businesses that are faced with multi-jurisdictional obligations.

Source: OECD (2015), *The BEPS Action 1 Report* (OECD, 2015<sup>[4]</sup>).

### **3A.3.5. Policy decisions establishing the scope of a simplified registration and collection regime**

There are a number of policy and design considerations that jurisdictions need to consider when adopting and implementing simplified compliance regimes in connection with international supplies of services and intangibles. These are considered in further detail below, in particular:

- Whether the simplified compliance regime is applied to B2C supplies only or to B2B supplies as well as to B2C supplies.
- How to determine the status of the customers (business or private consumer) in case the regime applies to B2C supplies only.
- To which types of services and/or intangibles the simplified compliance regime is applied: any services and intangibles that can be supplied remotely? Or only specific types, such as digital services/products?
- Whether a materiality threshold is applied below which non-resident suppliers are not required to register and to remit the VAT in the jurisdiction of taxation.
- What role can be assigned to online marketplaces and other digital platforms, intermediaries and agents in facilitating the operation of the simplified compliance regime and in enhancing compliance.

#### ***(i) B2B supplies as well as B2C supplies?***

The recommendation of the adoption of a simplified compliance regime for international supplies of services and intangibles when the supplier is not located in the jurisdiction of taxation is primarily targeted at B2C supplies. The reason for this limitation is that the reverse charge mechanism, which is not a viable option in the international B2C context, is generally regarded as a more effective collection mechanism than supplier collection in the international B2B context. Notably, it offers greater “enforcement” power for a jurisdiction due to the physical presence of the business customer within the taxing jurisdiction. Accordingly, the OECD guidance generally recommends the adoption of a reverse charge mechanism for collection of VAT on international B2B supplies of services and intangibles, but with the important caveat that this be consistent with the design of the national consumption tax system. See subsection 3A.3.3.

It needs to be recognised, however, that a jurisdiction’s existing VAT regime may not differentiate between B2B and B2C supplies. Such a jurisdiction may choose to implement a simplified compliance regime for both B2C and B2B supplies made by non-resident suppliers.

#### ***(ii) How to determine the customer’s status (business or private consumer)?***

When a jurisdiction applies different collection mechanisms for B2B and B2C supplies by non-resident suppliers, determining the status of the customer is an indispensable step for the non-resident supplier to determine its compliance obligations in the jurisdiction. Tax authorities that distinguish between collection obligations for B2B and B2C supplies should provide clear practical guidance on how suppliers can establish the status of their customer (business or private consumer).

Jurisdictions typically allow suppliers to rely on one or more indicia to establish their customer’s status. Such indicia that are widely used include the following:

- An identification number, such as a VAT registration number or a business tax identification number indicating the business identity and registration of the customer
- A certificate issued by the customer's competent tax authority, which indicates the business identity and registration of the customer
- Information available in commercial registers
- Commercial indicia, such as the nature of the supply, the value of the supply, the customer's trading history with the supplier, and digital certificates, which separately or collectively may indicate whether the customer is a business or a private consumer

Where a supplier, acting in good faith and having made reasonable efforts, is not able to obtain the appropriate documentation to establish the status of its customer, jurisdictions could recognise a presumption that the supply is to a non-business customer in which case the rules for B2C supplies would apply. To further facilitate suppliers' identification and verification of their customers' status, jurisdictions are encouraged to consider implementing an easy-to-use online process that would allow suppliers to verify the validity of their customers' VAT registration or tax identification numbers.

***(iii) Which supplies: any services and intangibles that can be supplied remotely? Or only specific types, such as digital services/products?***

Jurisdictions that decide to implement a simplified compliance regime for non-resident suppliers will need to determine the categories of supplies for which VAT will be remitted under the simplified regime as distinguished from the other categories for which the traditional regime would normally apply (or for which a jurisdiction may decide not to implement a registration and collection requirement). In general, one may identify two basic approaches to this issue: a broad approach and a targeted approach.

### **The broad approach**

Under a broad approach, a simplified compliance regime is utilised to collect VAT on any type of B2C supply of services and intangibles by a non-resident supplier, regardless of the basis (or "proxy") for allocating the taxing rights to the jurisdiction of taxation. Jurisdictions could thus use the simplified compliance regime to collect VAT on any type of B2C supplies by suppliers that are not located in the taxing jurisdiction and for which the jurisdiction has acquired the taxing rights.

An advantage of such a broad approach is that it reduces risks of uncertainty, complexity and possible disputes that might result from implementing different tax treatments for different categories or types of supplies. It reduces definitional questions and hence no need to define which types of supply are in and out of scope. It also reduces the need to revise the rules whenever new types of supplies emerge and is therefore likely to be more future proof than a limited approach, something that is typically relevant in the digital economy. It is therefore likely to provide greater consistency in the tax treatment of similar types of supplies. Overall, a broad approach is therefore likely to reduce complexity and uncertainty for suppliers as well as for tax administrations.

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

## The targeted approach

A number of jurisdictions have chosen to limit the scope of their simplified compliance regime to what can generally be described as “digital” B2C supplies of services and intangibles by non-resident businesses. These typically include the following categories of supplies:

- digital content purchases such as downloads of e-books, videos, apps, games, music
- subscription-based supplies of content such as news, music, streaming of video, online gaming
- supplies of software services and maintenance such as anti-virus software, digital data storage etc.
- licensing of content such as provision of access to specialised online content such as publications and journals, software, cloud-based systems, etc.
- telecommunication and broadcasting services

Such an approach may be motivated by the objective to ensure the effective collection of VAT on B2C supplies in sectors where the risk of competitive distortion between domestic and non-resident suppliers is considered most acute and/or where tax revenue is considered to be most at risk.

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

The European Union was the most obvious example of a jurisdiction that had implemented a targeted approach to determining in-scope supplies. It had adopted a definition of digital services (“electronically supplied services”), which has inspired analogous legislation employed by several other jurisdictions. The EU definition provides that such services are capable of delivery from remote locations, i.e. supplied over the Internet or other electronic network, and are essentially automated, involving minimal human intervention and incapable of being supplied without information technology. Starting from July 2021, the European Union extends its simplified registration and collection regime for non-resident suppliers to all B2C supplies of services, thus changing to a broad approach.

## Conclusions on the scope of services and intangibles that a simplified compliance regime captures

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

The broad approach to defining ‘in scope’ services and intangibles has the advantage of minimising inconsistencies of treatment and maximising potential VAT revenues. It also relieves tax authorities of the administrative burden of constantly updating and policing a targeted definition of digital supplies. For these reasons, the broad approach to determining scope represents the trend among jurisdictions that have been asserting their taxing rights over international supplies of services and intangibles.

Whichever approach tax authorities may choose to implement, they are encouraged to consider the following policy actions:

- To provide clear and easily accessible communication on the supplies that are covered by the regime in order to maximise certainty for both suppliers and the tax administration.
- To regularly review the efficiency and the effectiveness of the regime, including assessment of whether its scope remains fit for purpose.

#### *(iv) Implement a registration threshold for non-resident suppliers?*

Several jurisdictions have adopted registration thresholds in connection with VAT collection obligations as a tool to minimise the risk of disproportionate administrative and compliance costs for businesses (notably SMEs) and tax administrations. The introduction of thresholds deserves careful consideration, and a balance should be sought between the desire to minimise administrative costs and compliance burdens for tax administrations and non-resident suppliers and the need to maintain an even playing field between domestic and non-resident businesses.

Tax authorities may need to review the following key policy issues when considering the possible implementation of a threshold in the context of a simplified compliance regime for non-resident suppliers of services and intangibles:

- Neutrality issues: the potential impact of a threshold on the competitive position of domestic and non-resident suppliers
- Simplification issues: the potential reduction of compliance costs for non-resident businesses, particularly for SMEs. The costs of registration may otherwise be prohibitive for SMEs in light of low sales volumes.
- The impact on the efficiency and effectiveness of tax administration. This includes possible reduction in administrative costs and increased efficiency for tax administrations that may focus their attention on fewer taxpayers with higher tax liabilities.
- The determination of the level of the threshold
- The implementation of anti-abuse measures and the associated costs for tax administrations
- The provision of clear guidance on the operation of the threshold
- The treatment of occasional or unintended sales into a jurisdiction

#### *(v) What role for intermediaries and agents?*

The collection of VAT on international supplies of services and intangibles can be further facilitated by enlisting parties other than the supplier that are involved in some way in the supply chain or execution of the transaction, particularly those located in digital supply chains. Digital platforms, including online marketplaces, are in principle best placed to facilitate the collection of VAT on online sales. This Toolkit therefore includes detailed guidance on the role of digital platforms in subsection 3A.4.

Compliance for non-resident suppliers could be further facilitated by allowing such suppliers to appoint a specialised third-party service provider to act on their behalf in carrying out certain procedures, such as registration and submitting returns. These third-party service providers could include providers of VAT compliance technology and other tax agents and advisers that specialise in supporting international

businesses with their tax obligations in multiple jurisdictions. Their functions can range from purely administrative tasks, such as VAT calculation and remittance, return filing and record-keeping, to assuming full responsibility for the non-resident supplier's obligations abroad. Their services could be especially helpful for SMEs and businesses that are faced with multi-jurisdictional obligations. Similar advantages may be recognised for tax authorities, as such specialised service providers are likely to improve the quality of compliance by non-resident suppliers with their VAT obligations.

In the past, when international transactions were relatively limited in number and individual transactions involved relatively high amounts, jurisdictions often required the appointment of local fiscal representatives to collect and remit VAT on behalf of non-resident suppliers. Despite the potential of such a fiscal representative to facilitate tax collection and enforcement, the complexity of such an appointment has been found to result in unintended consequences, such as the decision of non-resident suppliers (particularly those with few sales or small profit margins) to restrict their trade with those jurisdictions or, in certain cases, not to comply with VAT obligations in those jurisdictions. These consequences merit careful consideration when designing a registration-based collection regime for non-resident suppliers.

### *(vi) Building an effective administration and operational infrastructure*

#### **Primacy of online portals and electronic communication**

The simplest way to engage with tax administrations from a remote location is most likely by electronic processes, i.e. registration and collection processes delivered principally by electronic means, with minimal requirements for physical movement of documentation. Such an approach can provide considerable benefits to both tax administrations and taxpayers. Many tax administrations have taken steps to exploit the use of technology to develop a range of electronic processes to support the operation of their simplified compliance regimes including the development of dedicated web portals.

It is recognised, however, that tax administrations operate in varied environments and reliance on electronic processes may differ depending on the existing infrastructure or capacity. For detailed guidance on the creation and administration of the IT infrastructure, see Section 4D.

#### **Detailed guidance on building the administration for simplified VAT compliance regimes**

Section 4 of this Toolkit provides detailed practical guidance regarding the design and implementation of a simplified VAT compliance regime. This guidance covers the following core aspects in detail:

- Registration procedures. This includes discussion of elements of the online registration application, information requested for registration, and documentation.
- Input tax recovery/refunds. This includes discussion of regular and separate VAT recovery/refund procedures and VAT adjustment and correction mechanisms.
- Return procedures. This includes discussion of required information, simplified VAT returns, electronic returns, and returns frequency questions.
- Payments. This includes discussion of payment methods, rounding rules, and foreign exchange rate issues.
- Record-keeping. This includes discussion of data to be recorded and storage of records, and how to access records, e.g. for audit purposes.
- Invoicing. This includes discussion of eliminating invoicing requirements in connection with B2C supplies. It also includes options for addressing the practical challenges that a jurisdiction's existing consumer protection laws could create for non-resident suppliers where they require suppliers to display VAT-inclusive pricing on their website at all stages of the online shopping experience.

- Communications strategy. This includes discussion of strategies for making critical information readily available.
- Regularisation of suppliers that fail to register including discussion of strategies for encouraging compliance.
- Adequate lead-time. Discussion of the importance of providing adequate lead-time for the introduction of a simplified compliance regime. A lead-time of 6-12 months between adoption of laws and their entry into force for international supplies of services and intangibles, and of 12-18 months for imports of low-value goods is generally considered appropriate. Note that close alignment with the recommended OECD framework can considerably shorten these lead-times.

### 3A.4. Establishing a central role for digital platforms

#### Key messages

**The OECD Platforms Report** is the basic reference source for the analysis and guidance presented in this subsection 3A.4. It is complemented with “lessons learned” from the experience of the growing number of jurisdictions worldwide that have already implemented this guidance. It analyses the central role that online marketplaces and other digital platforms play in the explosive growth of digital trade. It identifies effective and internationally agreed approaches allowing tax authorities to benefit from these platforms’ central role in digital trade to significantly enhance the collection of VAT on digital transactions.

**Full VAT liability regimes** form the main component of the OECD Platforms Report. Jurisdictions can significantly enhance VAT collection and administrative efficiency by making digital platforms liable for the VAT on supplies that non-resident online suppliers make through these platforms.

**Reporting requirements and other supporting measures.** Jurisdictions can further enhance compliance by imposing reasonable and proportional information reporting requirements upon digital platforms, as well as the responsibility to inform and educate the non-resident businesses that sell through their platform on their VAT compliance obligations.

**Domestic supplies:** Jurisdictions may consider the advantages of extending the full liability regime to some or all domestic supplies made through platforms under certain circumstances.

## Guide to Subsection 3A.4

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### 3A.4.1. Overview

“Digital platform” is used as a generic term to describe the platforms that enable, by electronic means, direct interactions between two or more customers or participant groups, typically buyers and sellers. Digital platforms have two key characteristics: (i) each group of participants (e.g. online buyers and sellers) are users and therefore customers of the platform in some meaningful way, and (ii) the platform enables a direct interaction between these groups of participants (e.g. online sales of goods or services). Because these platforms interact with multiple groups of users (e.g. online buyers as well as sellers), they are also

known as multi-sided platforms (see subsection 2.5).<sup>16</sup> Online marketplaces are the typical examples of a digital platform.

This subsection first highlights the central role of digital platforms in digital economy growth and the potential roles they may play in the collection of VAT on online sales. It then provides further detailed guidance for the design of these roles, in particular:

- Full VAT liability regimes
- Information sharing obligations
- Education of suppliers using digital platforms
- Formal co-operation agreements, and
- Platforms operating as voluntary intermediaries

### **3A.4.2. The role of digital platforms in the digital economy and their potential to support VAT collection**

The growth of the digital economy has fundamentally changed the nature of retail distribution channels for business-to-consumer (B2C) sales of services, intangibles and goods to private consumers. Traditionally, a consumer would make a purchase from a local store. Today a consumer's first port of call is frequently a website of that store, the website of a seller based in another country or increasingly a digital platform through which many suppliers make sales.

Digital platforms allow businesses, particularly smaller businesses, to efficiently access millions of consumers in what is now a global marketplace. The number of consumers buying online has been estimated to have exceeded two billion in 2020 (Statista, 2021<sup>[41]</sup>). Research has also estimated that 57% of international supplies of goods are purchased through the three largest digital platforms, with many other platforms operating at a domestic level and in geographic clusters (International Post Corporation, 2017<sup>[42]</sup>). As a result, it is estimated that approximately two in every three e-commerce supplies of goods are made through digital platforms, with one out of three made through direct sales.

Thus, digital platforms play an increasingly dominant role in the effectuation of international supplies of services, intangibles, and goods in the B2C context. This is a context in which the challenges to effective collection of VAT are widely recognised and where digital platforms may play a role in facilitating the effective collection of VAT on sales by underlying suppliers operating on their platforms. The OECD Platforms Report hence seeks to provide guidance for national legislation that will assist jurisdictions in enlisting digital platforms in the VAT collection process.

In the contemporary digital economy, the relative advantages of enlisting a digital platform in the VAT collection process over the pre-existing alternatives are apparent. Digital platforms generally are better positioned than other third-party service providers to assist with the VAT collection process because of their close connection with the supply and their access to the relevant tax-related information. Moreover, imposing tax compliance obligations on the platform does not require an underlying non-resident supplier to incur the economic and administrative burdens associated with maintaining a fiscal representative, which could induce suppliers to restrict their trade into a jurisdiction or, either deliberately or inadvertently, to fail to comply with the rules of the taxing jurisdiction. Finally, the platforms are able to exercise a degree of economic control over non-resident suppliers' businesses whereas tax authorities may have limited

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<sup>16</sup> It may be useful to observe that a digital platform might also be viewed as including all forms of intermediation in a supply, including an undisclosed agent model where a platform sells in its own name or acts as wholesaler, as well as broadcasters that perform intermediation functions.

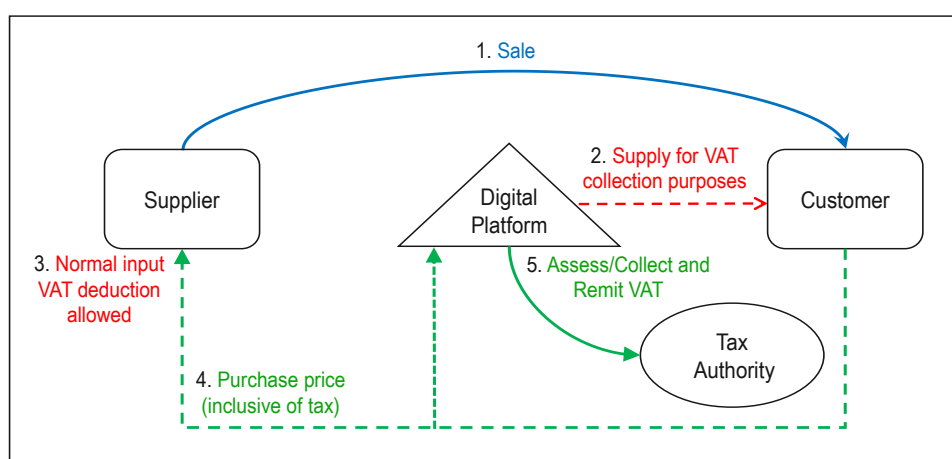
authority or capacity to enforce tax obligations on non-residents. The foregoing advantages of enlisting digital platforms benefit tax authorities as well as taxpayers.

### 3A.4.3. The full VAT liability regime for digital platforms

#### (i) Overview of the full VAT liability regime

A full VAT liability regime is the most effective and comprehensive means of ensuring compliance with VAT obligations on the sales that underlying non-resident suppliers make through digital platforms. Under a full VAT liability regime, the digital platform is designated by law as the supplier for VAT liability purposes. Under this regime, the digital platform is solely and fully liable for assessing, collecting, and remitting the VAT on the online sales that go through the platform to the tax authorities in the jurisdiction of taxation, according to the VAT legislation of that jurisdiction. This full liability regime is limited to VAT obligations and does not deal with any other liability concerns for digital platforms beyond VAT such as product liability.

Figure 3A.1. Basic operation of the full VAT liability regime for digital platforms



Note: the sequence of numbers assigned in the diagram is for identification only. It is not intended to indicate the timing of a specific step in chronological order.

Source: OECD (2019), *The Platforms Report* (OECD, 2019<sup>[3]</sup>).

Under full VAT liability regimes as illustrated in Figure 3A.1 above, if a supplier (the “underlying supplier”) makes an online sale (the “underlying sale”; see transaction (1) in the illustration) through a digital platform to a customer in the jurisdiction of taxation, the platform is fully and solely liable for the VAT with respect to the sale in the jurisdiction of taxation. The jurisdiction of taxation defines the conditions for the application of the regime. The basic mechanics for the collection and payment of the VAT may be summarised as follows:

- The digital platform assumes VAT liability for the underlying sale as if it had made the sale itself (2).
- The underlying supplier is in principle relieved of any liability on the underlying sale to avoid double taxation.
- The full VAT liability regime should not have any impact on the right of the underlying supplier to deduct any associated input VAT. It is up to the jurisdiction concerned to design the appropriate mechanism to achieve that objective (3).
- This objective can be achieved by treating the digital platform as having received the supply from the underlying supplier and having supplied it onwards to the customer in the jurisdiction of

taxation. Each of these supplies is then subject to the appropriate VAT rules, including invoicing and reporting requirements. Such an approach allows the underlying supplier and the digital platform to process the sale for VAT purposes, including the deduction of the associated input VAT by the underlying supplier and the entry of an input transaction that corresponds to the output transaction into the digital platform's VAT account. This approach can be further simplified by treating the deemed supply by the underlying supplier to the digital platform as zero-rated or to implement a reverse-charge regime where this is compatible with the domestic VAT rules.

- Each of these supplies should be supported by the appropriate documentation covering the full value chain for VAT auditing purposes, in accordance with the rules of the full liability regime in the jurisdiction of taxation. In this connection, jurisdictions are encouraged to adopt simplified documentation and reporting requirements as appropriate.
- The customer can make the payment for its purchase either to the digital platform or to the underlying supplier (4). If the payment is made to the digital platform, then the digital platform will remit the VAT component to the tax authority in the jurisdiction of taxation. If the payment is made to the underlying supplier, the digital platform will need to recover the VAT component from the underlying supplier in order to remit it to the tax authorities in the jurisdiction of taxation (5).

The primary policy motivation for tax authorities to consider introducing a full VAT liability regime for digital platforms is to reduce the costs and risks of administering, policing, and collecting VAT on the ever-increasing volumes of online sales. Tax authorities effectively achieve this by drawing on the relatively limited number of platforms that currently facilitate large shares of online sales and that are capable of complying with the VAT obligations with respect to these sales. These administrative costs and risks are likely to be significantly lower than in circumstances where taxes would need to be collected on individual sales from the large number (potentially millions) of underlying suppliers, especially non-resident suppliers. At the same time, such a regime could potentially reduce the compliance costs for the underlying suppliers who are likely to face multi-jurisdictional obligations.

The following paragraphs outline a number of considerations that could facilitate and encourage compliance by digital platforms and further mitigate their associated compliance burden and risk.

### ***(ii) Functional criteria to determine the digital platforms that are in scope of a full VAT liability regime***

It is reasonable to assume that a platform will be in a position to comply with the obligations imposed by a full VAT liability regime only if the platform:

- Possesses or has access to sufficient and accurate information to make the appropriate VAT determination, and
- Has practical means to collect the VAT on the supply.

One can consider that a digital platform will be effectively capable of complying with the obligations under a full liability regime when it performs certain core functions, including at least one of the following<sup>17</sup>:

- Controlling the terms and conditions of the underlying transactions (e.g. price, payment terms, delivery conditions) and imposing these on participants in the supply (buyers, sellers, transporters).

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<sup>17</sup> For a practical example of how jurisdictions implement this approach to determining whether a digital platform performs critical functions within scope of a full liability regime, please see: EU Commission (2020), *Explanatory Notes on VAT e-commerce rules*, pages 17 to 21 at [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/vatecommerceexplanatory\\_28102020\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/vatecommerceexplanatory_28102020_en.pdf).

- Involvement in the authorisation and processing of payments (either directly or indirectly through arrangements with third parties, including collection of payments from customers and transmission of payments to sellers).
- Involvement in the delivery process and/or in the fulfilment of the supply (including influence over the conditions of delivery; transmission of approval to suppliers and instructions to transporters; and provision of order fulfilment services with or without warehousing services).

If a digital platform *only* carries content, or *only* processes payments, or *only* advertises offers, or *only* operates as a click-through referral platform, it may not be able to comply with the obligations under a full liability regime. It may be appropriate to exclude such a platform from the scope of a full VAT liability regime.

In delineating the criteria for determining digital platforms' eligibility for a full VAT liability regime, tax authorities may also wish to consider the following broader policy concerns:

- Focusing on functions rather than on types of platforms or business models, because such an approach is likely to be more future proof and to encourage greater consistency in the tax treatment of platforms performing similar functions irrespective of the business and delivery models used.
- Addressing cases where more than one digital platform in a supply chain is eligible for a full VAT liability regime, including the possible application of hierarchy rules.
- Undertaking regular review of platforms' eligibility and suitability for a full VAT liability regime in light of technological and commercial developments to ensure their continuing efficiency and effectiveness.
- Consulting with the business community for the design and effective operation of a full VAT liability regime.
- Providing clear and easily accessible information, preferably online, on the criteria for determining whether digital platforms fall within the scope of the full VAT liability regime.

### *(iii) Additional factors in determining the scope of a full VAT liability regime*

Other factors that are likely to be important when designing the scope of a full VAT liability regime are the following:

- The residence of the digital platform operator
- The application to supplies by domestic underlying suppliers as well as to supplies by non-resident underlying suppliers
- The application to supplies/imports of goods as well as to supplies of services and intangibles
- The application to B2B supplies as well as to B2C supplies

#### **Residence of digital platform operators**

In principle, it should make no difference whether the digital platform is operated by a resident or by a non-resident of the taxing jurisdiction. Consideration might nevertheless be given to the fact that enforcement may be more challenging with respect to a digital platform operated by a non-resident, and tax authorities might consider introducing additional (reasonable and proportionate) safeguards to reduce risks of non-compliance where appropriate. Consideration might also be given as to how existing rules applicable to domestic digital platforms may interact with conditions imposed under the full VAT liability regime.

#### **Non-resident and domestic underlying suppliers**

In principle, the introduction of a full VAT liability regime for digital platforms may be directed primarily at the collection of VAT on sales by non-resident underlying suppliers in recognition of the greater challenges

of effectively enforcing VAT compliance obligations on taxpayers that are not located in the jurisdiction of taxation. However, limiting the scope of the full VAT liability regime to transactions involving non-resident underlying suppliers is likely to create compliance complexities for both digital platforms and tax administrations in distinguishing between domestic and non-resident suppliers in the implementation of the full VAT liability regime. These considerations might support the application of the full VAT liability regime to all relevant transactions regardless of the location of the underlying supplier.

Alternatively, tax authorities that limit the scope of a full VAT liability regime to supplies by non-resident underlying suppliers may consider permitting digital platforms to agree with their domestic underlying suppliers that the platform will be fully liable for the VAT obligations with respect to the supplies made by these underlying suppliers. For goods, this may be a suitable solution where a seller using a digital platform provides supplies to consumers both from offshore and through a domestically located fulfilment centre.

It is also important to recognise, however, that there may also be notable drawbacks to extending the full liability regime for platforms to sales by domestic suppliers. For example, if the platform were responsible for all domestic sales, it could lead to VAT being charged on sales by smaller businesses, which are not VAT-registered and hence have no right of input recovery. Jurisdictions must consider the costs and benefits of extending the full liability regime from both an administrative and neutrality perspective.

### **Services, intangibles and goods**

In considering the appropriate scope of a full VAT liability regime for digital platforms, jurisdictions must address the question of whether the regime applies to all supplies (services, intangibles, and goods) carried out over such platforms, to services and intangibles generally but not to goods, or only to a subset of services and intangibles.

A number of jurisdictions have limited the scope of the full VAT liability regime to digital platforms that intervene in what may broadly be described as remote “digital” or “electronic” supplies by non-resident suppliers. Such an approach may be motivated by the objective of ensuring the effective collection of VAT on supplies in sectors where tax revenue is considered to be most at risk while aiming to avoid changes for suppliers and tax administrations in areas where there is no compelling need to deviate from existing collection regimes.

Broadening the scope of this regime to cover other types of services that non-resident suppliers can deliver remotely to consumers would be a logical extension, ensuring a broad tax base for VAT on international supplies of services and intangibles, and minimising neutrality challenges. For example, such extension might include of accountancy, legal and consulting services, which non-resident firms can provide via the Internet to consumers in a jurisdiction.

A rising number of jurisdictions are considering the adoption of a full VAT liability regime for digital platforms as a possible approach to increase the efficiency and the effectiveness of VAT collection on imports of low-value goods. The VAT collection issues associated with online sales of imports of low-value goods have increasingly become a pressure area for tax and customs authorities worldwide. There has been extraordinary growth in international sales of goods, with parcel volume increasing from 44 billion in 2014 to 65 billion in 2016 across 13 major markets and growing at a rate that is calculated to be 17%-28% each year between 2017 and 2021 (Pitney Bowes, 2017<sup>[34]</sup>). Jurisdictions considering adoption of full VAT liability regimes for digital platforms in respect of low-value goods are motivated essentially by the view that the regime will limit or remove the need for customs authorities to intervene in revenue collection processes for imports that are not subject to customs and other duties upon importation. This is expected to lower the cost of collection of VAT on imports of low-value goods significantly. It also allows customs authorities to fully allocate their resources and capacity on the other key roles they perform, notably to ensure the safety and security of the value chain, e.g. detection and prevention of the unlawful movement of illicit and counterfeited goods. VAT on imports of goods above the customs threshold can then (continue

to) be collected together with customs duties and taxes under normal customs procedures for imported goods.

### **B2C and B2B supplies**

When a jurisdiction's VAT rules do not distinguish between B2B and B2C supplies, the full VAT liability regime could apply to the collection of VAT on both categories of supplies performed over a digital platform. However, where a jurisdiction distinguishes between B2B and B2C supplies for the collection of VAT on international supplies, the implementation of a full VAT liability regime would generally not be intended to replace the operation of existing collection mechanisms for inbound B2B supplies. These are typically based on the reverse charge (or self-assessment) mechanism (see subsection 3A.3.3 or special rules either eliminating or deferring the business customer's tax remittance obligation under appropriate circumstances.

When a jurisdiction applies different VAT rules for B2B and B2C supplies, knowledge of the customer's status (business or non-business) is indispensable for determining the correct VAT treatment of a supply. Accordingly, when such a jurisdiction adopts a full VAT liability regime for digital platforms, tax authorities should provide clear practical guidance to digital platforms on how to make the distinction between B2B and B2C supplies. In addressing this issue, jurisdictions are encouraged to rely on the guidance concerning the indicia for determining customer status included in subsection 3A.3.5.(ii).

#### ***(iv) Information needs for digital platforms***

To make the correct tax determination under the full VAT liability regime, digital platforms should in principle be able to rely on information that is known, or can reasonably be obtained, at the time when the tax treatment of the supply must be determined. While digital platforms may reasonably assume that underlying suppliers selling through their platforms are businesses, other key information elements that may be considered relevant for digital platforms to make correct VAT determinations under the full liability regime include:

- Customer status, if the taxing jurisdiction differentiates between B2B and B2C
- The nature of the supply
- Elements to determine the place of taxation and/or the applicable VAT collection regime
- VAT registration threshold, if applicable
- The value of the supply and the applicable VAT rate
- The taxing point, i.e. the time in the transaction at which VAT liability arises

#### ***(v) VAT collection and payment processes***

A crucial element in the design of a full VAT liability regime for digital platforms is the definition of the taxing point, i.e. the time at which the digital platform is required to account for the VAT on the supplies carried out through its platform for which it has VAT liability. In principle, making this determination could give rise to significant complexity for digital platforms, because they are required to account for the VAT on supplies going through their platform without being the actual underlying supplier. A practical solution for this problem is to define the taxing point at the time at which the confirmation of the payment is received by or on behalf of the underlying supplier. This is the time at which the payment has been accepted or authorised by or on behalf of the underlying supplier. This does not necessarily mean that the actual money transfer has been made.

There are a range of possible scenarios for the practical process of collecting and remitting VAT by a digital platform under the full VAT liability regime. The principal distinction is between the scenario where the

customer pays the VAT-inclusive price to the platform and the scenario where the customer pays directly to the underlying supplier.

- Where the customer pays the purchase price inclusive of VAT through the digital platform, the digital platform will in principle remit the VAT component to the tax authorities in the taxing jurisdiction and the balance (sales price minus any fees and commissions) to the underlying supplier.
- If the customer pays the purchase price inclusive of VAT directly to the underlying supplier, the digital platform will need to recover the VAT component from the supplier (plus any fees and commissions).

Further guidance regarding the payment process under the full VAT liability regime, particularly with regard to low-value goods, is set out in the Platforms Report and in its annexes.

### *(vi) Overarching design considerations*

While the design of full VAT liability regimes is likely to differ across jurisdictions, tax authorities are encouraged to ensure as much consistency as possible in an international context. Consistency among country approaches is vital to achieving high compliance levels, notably by reducing compliance costs and improving the quality and performance of compliance processes. This is particularly important for full VAT liability regimes for digital platforms, which are likely to be faced with multi-jurisdictional obligations with respect to supplies that are carried out by third-party suppliers.

To achieve these consistency objectives, tax authorities are encouraged to consider the following overarching policy design considerations when designing and implementing a full liability regime for digital platforms:

- Promote compliance by limiting VAT compliance obligations to what is strictly necessary to facilitate the compliance process.
- Consult with the business community by, among other things, reaching out to relevant digital platforms as well as other actors in the supply chain that are likely to be affected by the regime.
- Publicise the introduction of the regime widely and provide adequate lead-time when introducing the regime.
- Clearly define the VAT obligations of the underlying supplier, notably in its relationship with the platform.
- Ensure that the full liability regime does not have any impact on normal VAT deduction rules at the level of the underlying supplier.
- Provide guidance on the operation of registration thresholds and/or sales thresholds, where such thresholds have been implemented.
- Consider the need for rules to limit compliance risks for platforms acting in good faith and having made reasonable efforts to ensure compliance, particularly in relation to the information on which platforms have based their tax determination.
- Consider trade-related issues.
- Ensure close co-operation/coordination between the VAT and customs authorities for international B2C sales of goods.
- Take account of a range of additional policy design considerations focused on the operation of the full VAT liability regime for online sales connected with an importation of low-value goods.
- Complement the design of the full VAT liability regime with robust international administrative co-operation and the implementation of a risk-based compliance strategy as appropriate.

### Box 3A.3. Example of primary legislation for full VAT liability for digital platforms facilitating international remote B2C supplies of services and intangibles – Australia

In Australia, the Goods and Services Act 1999 sets out the legal basis of full liability for digital platform operators for GST on the supplies of non-resident suppliers selling through their platforms. These provisions are presented here for illustrative purposes. This is not intended to suggest that these provisions are translatable templates for model legislation. Indeed, it is crucial that tax officials responsible for developing tax policy in their own jurisdictions ensure that they design laws that are compatible with their domestic VAT legal framework and which they can integrate smoothly without oversights and unintended consequences.

The relevant Australian provisions are situated primarily within the part of the Act entitled *Chapter 4 - The special rules, Part 4-2 – Special rules mainly about supplies and acquisitions, Division 84 - Offshore supplies, Subdivision 84-B - Inbound intangible consumer supplies. As part of Subdivision 84-B:*

- **Section 84-55 Operator of electronic distribution platform treated as supplier, paragraph (1)**, states: 'If an inbound intangible consumer supply is made through an electronic distribution platform, the operator of the platform, instead of the supplier, is treated, for the purposes of the GST law:
  - (a) as being the supplier of, and as making, the supply; and
  - (b) as having made the supply for the consideration for which it was made; and
  - (c) as having made the supply in the course or furtherance of an enterprise that the operator carries on.'
- **Subsection 84-55(4)** qualifies **84-55(1)** to explain the relatively limited set of circumstances in which a digital platform would not be liable for GST as the supplier of the digital products sold through it. This would include, among several other criteria, an agreement with the underlying non-resident supplier explicitly acknowledging the latter's responsibility for collecting and accounting for the GST due.
- **Section 84-65 Meaning of inbound intangible consumer supply** defines inbound intangible consumer supplies to make it clear they encompass virtually all international supplies of services and intangibles by non-resident businesses to Australian consumers.
- **Section 84-70 Meaning of electronic distribution platform** defines an electronic distribution platform (EDP) to capture the business models of almost all digital platforms and online marketplaces that enable third-party suppliers to make supplies of services and intangibles (including 'digital products') to consumers through the platform. Where non-resident suppliers generate sales through the platform, they must make and deliver the supplies to the consumer by means of electronic communication in order for the platform to qualify as an EDP.

Source: Australian Government, A New Tax System (Goods and Services Tax) Act 1999, law as amended and in force on 1 October 2020, at <https://www.legislation.gov.au/Details/C2020C00334>

#### 3A.4.4. Additional roles for digital platforms to support VAT collection

A range of possible additional and/or alternative roles for platforms can be considered besides the full VAT liability regime to assist jurisdictions with the efficient and effective collection of VAT on online sales. These roles include:

- Imposing information reporting or sharing obligations upon the platform
- Encouraging or requiring platforms to educate the underlying suppliers that use their platforms
- Entering into formal agreements with digital platforms based on the co-operative compliance concept
- Authorising platforms to operate as a voluntary intermediary for VAT collection on behalf of underlying suppliers
- Imposing clearly defined and proportionate joint and several liability upon platforms and their suppliers, as well as other intermediaries such as fulfilment houses, in cases in which the supplier has failed to comply with its VAT obligations in a jurisdiction

### *(i) Information sharing obligations*

As a means of assisting with compliance, an information sharing obligation could be envisaged by tax authorities whereby a digital platform would be required by law to provide the tax authority with information relevant for VAT compliance purposes without the platform necessarily being liable or having a role in collecting and remitting the tax. In designing such a measure, a tax authority will need to consider what type of information it needs to support the efficient and effective VAT collection on online sales. The tax authority must determine to what extent it is reasonable to seek such information from digital platforms (e.g. whether the platform can be expected to have the requested information at hand) and whether it actually has the human and technical resources to process the collected data to support VAT collection.

In general, tax authorities are encouraged to ensure that information sharing obligations for digital platforms to support VAT collection on online sales are properly balanced against the overall policy objective of keeping compliance costs and administrative burden as limited as possible.

#### **Scope and application of information sharing obligations**

In determining the scope and application of this obligation, it may be useful to consider whether the obligation to provide information is a standalone measure or whether it supplements the full VAT liability regime or other roles to support VAT collection.

If the obligation is designed as a standalone measure, then it would be reasonable to target all digital platforms that have access to information relevant for VAT compliance purposes. In this case, the information sharing obligation could apply to digital platforms that:

- Play an integral role in the supply, e.g. online marketplaces
- Connect buyers with sellers (click-through or shopping referral platforms)
- Receive a fee, commission, or other consideration for listing of items
- Process payments

If, however, the obligation is designed to be imposed along with other measures targeted at digital platforms, including VAT collection and reporting obligations, it might be reasonable and proportionate to limit the application of any additional information sharing obligations to the digital platforms that are not already covered by those other measures.

Because digital platforms may be located outside the taxing jurisdiction, it should be recognised that enforcing such an obligation against foreign digital platforms may be challenging. Accordingly, such an information sharing obligation is ideally combined with administrative co-operation arrangements between jurisdictions. Readers will find an introduction to the main approaches to international administrative co-operation at Annex A in the subsection summarising Chapter 4 of the International VAT/GST Guidelines, i.e. under the heading “Chapter 4. Mechanisms to support the Guidelines in practice”. Subsection 5.7 of this Toolkit then addresses the subject in detail.

#### **Nature of information that digital platforms would have an obligation to share**

Digital platforms are capable of collecting a vast amount of data. It is reasonable to require the sharing of information that is available to digital platforms in the normal course of their business activities and that is proportionately relevant for VAT compliance purposes. Specifically, this would comprise information necessary to satisfy the tax authorities that the tax for a supply has been charged and accounted for correctly by the underlying supplier or, if applicable, by the platform. Box 3A.4 below outlines the core information elements that tax authorities may reasonably require to be shared. Such information may include:

#### Box 3A.4. Main information elements that tax administrations may require from digital platforms

- The identification of the supplier, including the tax identification number
- The nature of the supply
- The date of the supply
- The value of the supply
- The VAT amount and rate
- The shipping agent
- The shipping address
- The fulfilment warehouse, if any
- The customer location
- Information used to determine customer location
- The payment service provider
- An invoice or other document issued to the customer

#### Implementing information sharing obligations

Two broad options may be considered for the implementation of information sharing obligations for digital platforms for VAT compliance purposes: provision of information on request and systematic provision of information. Under the first option, the jurisdiction would require the digital platform to retain records of sales subject to VAT in the jurisdiction and to produce such information upon request. Under the second option, a digital platform would be required to systematically provide specified information on a periodic basis.

#### General policy and design considerations for information sharing obligations

The following policy and design considerations may inform a tax authority's approach to information sharing obligations imposed on digital platforms:

- Importance of identifying in advance the type of information that can reasonably be expected from a digital platform to ensure that policy objectives are met
- Striking an appropriate balance between collecting relevant information and avoiding imposing a disproportionate burden on digital platforms
- Consideration of interaction with other regulatory frameworks, e.g. privacy issues, competition law, information held in other jurisdictions
- Ensuring that information requested is not available by other means
- Provision of clear guidance on requested information (content, form, and frequency)
- Consideration of measures to facilitate compliance
- Allowing for appropriate lead-time in implementing information sharing obligations
- Promoting close co-operation between tax authorities and digital platforms
- Ensuring the availability of the necessary IT infrastructure to effectively receive, store and process bulk data (e.g. possibility for cross matching with taxpayer data and automated risk analysis of these cross-matches)

- Ensuring that data collected are used efficiently to boost compliance
- Sharing data with customs authorities
- Recognising benefits of international co-operation

### ***(ii) Education of suppliers operating on digital platforms***

Experience suggests that the availability of readily accessible and easily understood guidance for taxpayers benefits compliance levels by non-resident suppliers, particularly in jurisdictions that are utilising simplified registration and collection mechanisms for the collection of VAT on inbound international supplies. It can be difficult in practice, however, for tax authorities to reach out directly to suppliers outside their jurisdiction to advise them of their obligations, particularly with respect to supplies of goods where there may be millions of suppliers from around the world active on platforms.

Because many underlying suppliers use digital platforms to access the global market, there is an opportunity to use these platforms as communication channels to provide accurate and timely information to underlying suppliers on their VAT obligations. It is notable that several digital platforms have spontaneously taken initiatives to communicate with their underlying suppliers about these suppliers' VAT obligations in the various taxing jurisdictions, including the operation of online forums for the platforms' communities of suppliers whereby information on general regulatory issues, including taxation, can be shared.

Experience suggests that the ability to access this information from one place (e.g. through a dedicated web portal instead of a number of different sites) increases the efficacy of the communication and facilitates regular updating by the tax authorities. It is recognised, however, that tax authorities may lack the technological capacity to provide or manage such information and to keep it updated and accessible to suppliers worldwide. The capacity of digital platforms to communicate with the often large numbers of suppliers that sell through their platforms offers a unique opportunity to tax authorities to use these platforms for the dissemination of information on these suppliers' VAT obligations. This could include the provision and dissemination of guidelines, direct messages concerning notifications of changes in obligations, the organisation of webinars, and advice from tax authorities by means of a platform sellers' community forum.

The following general design considerations are relevant to the role platforms may play in educating suppliers:

- The education role should be designed to supplement rather than replace existing communications strategies employed by tax administrations.
- Platforms should be able to rely on information provided by tax authorities in communicating with underlying suppliers.
- Tax authorities should inform digital platforms of any changes to the information to be provided to underlying suppliers in a timely manner.
- Tax authorities should engage proactively with digital platforms in addressing questions raised by underlying suppliers.

### ***(iii) Formal co-operation agreements***

A further option that can be considered by tax authorities is to enter into formal agreements with digital platforms based on the co-operative compliance concept. Such agreements are essentially multi-faceted, in that they can combine a variety of measures and approaches to involve digital platforms in maximising VAT compliance levels in online sales. This would typically include information sharing (periodic and spontaneous) and education, including using the platform as a conduit to communicate with underlying suppliers on compliance obligations, etc. It could also encompass mutual obligations for tax authorities

and platforms to alert one another to instances of fraud, and platforms responding quickly to notifications by a tax authority where underlying suppliers are found to be in breach of their VAT obligations.

#### *(iv) Digital platforms as voluntary intermediary*

Tax authorities can consider allowing platforms to act voluntarily as a third-party service provider on behalf of underlying suppliers (i.e. businesses that carry out supplies through their platform). This could notably be relevant in cases where a platform is considered liable for certain supplies but not for others (see below). This provision could benefit the efficiency of compliance for both the platform and the underlying supplier.

#### **Scope of voluntary intermediary's role**

The key issue for a jurisdiction when considering the scope of a measure allowing a platform to act as a voluntary intermediary is whether it can lead to a more efficient and effective collection of taxes. In this context, a tax authority could see advantages in an arrangement whereby a trusted platform collects VAT or assumes the liability for the VAT on behalf of potentially thousands of underlying suppliers.

A jurisdiction could allow this provision to operate as complementary to the full VAT liability regime, applying it to transactions not covered by that obligation. A jurisdiction could also determine that the voluntary intermediary model could be useful as an intermediate step pending the coming into effect of a full VAT liability regime. Specifically, in relation to imports of goods from online sales, jurisdictions may wish to allow platforms to act as voluntary intermediaries to collect and remit the VAT on imports of goods beyond statutory liability requirements.

#### **General policy and design considerations for a voluntary intermediary approach**

The principal design and policy considerations informing the decision whether to authorise platforms to act as voluntary intermediaries include the following:

- Because the arrangement is voluntary and has potential benefits for tax authorities in terms of increasing compliance, it is essential that it be attractive for digital platforms in terms of compliance obligations.
- The scope for such a voluntary intermediary arrangement should be clearly defined.
- The voluntary intermediary agreement should be reflected in a clear agreement between the underlying supplier and the digital platform.
- A platform that chooses to operate as a voluntary intermediary should be able to benefit from any simplified registration and collection regimes that are available to underlying suppliers.
- It is essential that a tax or customs authority has the means to verify that the VAT has been, or will be, accounted for and that the platform has taken responsibility for this obligation.

### **3A.5. Making policy decisions and designing legislation**

The preceding subsections of Section 3A have outlined in detail the OECD's recommended policy framework for imposing and collecting VAT on international supplies of services and intangibles. Jurisdictions that have not yet adopted this policy framework will be able to develop a clear and holistic understanding of it from Section 3A. The next step for policy officials is to design their jurisdiction's VAT policy in respect of internationally traded services and intangibles and to design and implement laws that give force to the policy framework.

Designing new laws can be a complex process. Successful implementation of new laws will require incorporating them effectively into an existing body of VAT law that will often be lengthy and the product of

decades of complex amendments and superseding clauses. Jurisdictions must also be careful to align new VAT laws with wider tax laws and other regulatory regimes for businesses.

To assist jurisdictions in this next step, the Toolkit presents a checklist of the main issues to consider in developing policy and legislation targeted at international business-to-consumer (B2C) supplies of services and intangibles in Section 6.

Of course, there is not an easy one-size-fits-all standard solution for implementing the recommended solutions for the collection of VAT on digital trade into an existing VAT and legal framework. This Toolkit therefore emphasises that it is neither possible nor desirable to provide model legislation that tax authorities can or should simply transpose into national legislation. Jurisdictions should therefore keep in mind that the guidance in Section 6 is not prescriptive and they should treat it as non-exhaustive “checklists” to support policy design and not as “models”.

## **Section 3B. Imports of Low-Value Goods** (In particular imports of low-value goods from online sales)

## Key messages

Section 3A outlines in depth the OECD policy framework for the collection of VAT on international B2C supplies of services and intangibles by non-resident businesses.

In short, the OECD framework recommends that jurisdictions create the legal basis to assert taxing rights for VAT on international B2C sales of services and intangibles into their jurisdiction by reference to the customer's usual residence; that they impose VAT collection obligations on non-resident suppliers making such sales; and that they optimise levels of compliance by providing these suppliers with a simplified VAT registration and collection regime to fulfil their obligations.

**Section 3B sets out how jurisdictions can extend this policy framework to include VAT collection by non-resident suppliers on imports of low-value goods.**

- **Transfer the responsibility to collect VAT on imports of low-value goods to non-resident suppliers:** This Toolkit recommends extending the OECD policy framework for international B2C supplies of services and intangibles to include imported low-value goods. This would mean imposing an obligation upon non-resident suppliers and, where appropriate, digital platforms to collect the VAT on sales of such goods to consumers and remit this VAT to the tax authority in the jurisdiction of importation. This would relieve customs authorities of the burden of assessing and collecting VAT on low-value goods except in cases where there is no evidence that the supplier or a platform had collected VAT at the time of supply.
- **Central role for digital platforms, including full VAT liability regimes:** The full VAT liability regime for digital platforms can significantly enhance the effectiveness and efficiency of the policy framework that the OECD recommends for VAT collection on international digital trade including imported low-value goods.
- **Roles for other intermediaries:** Transporters could have a fallback role in collecting VAT on behalf of customs authorities when a non-resident supplier does not collect VAT on imports of low-value goods at the time of supply. This Toolkit does not recommend the use of financial intermediary-led VAT withholding mechanisms as primary mechanism for VAT collection on international B2C supplies. However, jurisdictions could consider the use of financial intermediary withholding as a fallback option to address persistently non-compliant, non-resident suppliers that refuse to register and collect VAT.
- **Extension of the full liability model for digital platforms to certain domestic supplies of goods by non-resident suppliers:** There are particular non-compliance risks connected with non-resident suppliers that make certain domestic supplies, notably those, which utilise domestic fulfilment houses. To address these risks, jurisdictions could consider extending the full liability model for digital platforms to include domestic supplies of goods that non-resident suppliers make.
- **Determining low-value consignment relief thresholds for VAT and customs duty:** An important policy decision is whether a jurisdiction wishes to (continue to) operate an import VAT low-value consignment relief threshold and, if so, to determine its appropriate level. Jurisdictions have broadly taken two distinct approaches to relief thresholds when implementing regimes for VAT collection by non-resident suppliers on imports of low-value goods:
  - **“No VAT thresholds”:** Some jurisdictions have removed *the low-value consignment relief threshold for VAT* on imports of goods, meaning VAT is due on all imports of goods. They have combined this with optional or mandatory VAT registration and collection responsibilities for non-resident suppliers and digital platforms for all imports of goods below *the low-value consignment relief threshold for customs duty*. They support this with mechanisms to prevent double taxation at importation, where the supplier or platform has already collected VAT at the time of supply.

- **“VAT registration and transactional thresholds”**: Some jurisdictions have maintained a low-value consignment relief threshold for VAT at item-level or consignment-level. This relief threshold for VAT may be set at the same level as the low-value consignment relief threshold for customs duty. Under this approach, customs authorities will in general clear imports of items or consignments with a value below that threshold without assessment for import VAT. This approach is typically combined with a revenue-based VAT registration threshold for non-resident suppliers making supplies of such low-value goods to final consumers in that jurisdiction, and an obligation for these suppliers to register for and collect VAT on all the low-value imported goods they sell if their revenues exceed the registration threshold.
- **Higher-value goods and goods subject to excise duty**: The Toolkit recommends excluding higher-value goods and goods to which excise duties apply (e.g. alcohol, tobacco, perfume, etc.) from the scope of VAT collection obligations for non-resident suppliers on imports of low-value goods.
- **B2B supplies**: Jurisdictions should decide on the treatment of imported low-value goods supplied to business customers. Jurisdictions that make a distinction between B2B and B2C supplies could consider applying a reverse charge or “postponed accounting” schemes for B2B supplies of imports of low-value goods.
- **Minimising risks of double taxation and unintended non-taxation of imports of low-value goods**: Information reporting requirements and data sharing will be useful to support tax and customs authorities’ strategies to minimise risks of double taxation, under-taxation and unintended non-taxation under a simplified compliance regime for imports of low-value goods.

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## 3B.1. Rationale for reforming the traditional VAT collection framework for international B2C supplies of low-value goods

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### 3B.1.1. Background

#### *(i) Traditional collection frameworks*

Under traditional systems, customs authorities levy and collect any VAT due on individual consignments of imported goods. VAT on imports is normally chargeable at the moment of importation when customs authorities prepare to release goods for delivery to consumers and businesses. Jurisdictions will calculate any import VAT and customs duties due based upon a customs import declaration. A transporter, such as an express carrier or a postal operator, will often be responsible to file the customs declaration and for collecting the VAT and duties from the customer. The customer will also then be liable for any administrative fee that the transporter charges for services that customs authorities require them to perform. Note that sometimes the supplier may designate an entity other than the customer as the ‘declarant’, ‘consignee’, or ‘importer of record’ on the import declaration.

From a theoretical perspective, imposing the VAT payment obligation on the customer as importer (or his or her designated declarant or consignee) achieves the allocation of VAT taxing rights to the jurisdiction of consumption in accord with the destination principle. However, VAT is normally collected on a fractional basis from suppliers in the production and distribution chain. Collecting the entire amount directly from customers upon importation is an exception to this supplier-based, staged collection process and concentrates risk at a single point rather than spreading it throughout the supply chain. Collecting VAT from consumers upon importation requires cumbersome item-by-item declaration.

Most jurisdictions, including many in the LAC region, provide a VAT exemption on the import of ‘low-value’ consignments. Jurisdictions often refer to this as ‘low-value consignment relief’ although some also use the term ‘negligible value’.

VAT low-value consignment reliefs originated as a simplification measure to remove and reduce what jurisdictions saw as disproportionate administrative burdens for their tax and customs administrations in the handling of imports of low-value goods. They did not historically see the tax forgone as significant because of the combination of relatively low volumes and low values. Indeed, the bigger risk was that the administrative costs of collecting VAT on imports of low-value goods would outweigh the revenue they actually collect.

Although the practical operation of customs frameworks and VAT low-value consignment reliefs varies from one jurisdiction to another, common features include<sup>18</sup>:

- A VAT low-value consignment relief threshold is typically set between USD 25 and USD 300. Goods with a value below this threshold are exempt from VAT at importation. Note that some LAC jurisdictions, including Brazil, Chile and Costa Rica, historically have had no threshold at all. Some jurisdictions provide simplified customs declaration procedures for low-value consignments.
- Jurisdictions sometimes exclude goods that consumers have imported by ‘mail order’ from low-value consignment relief or apply a lower relief threshold. The term ‘mail order’ may then be defined to include digital platforms facilitating sales of retail goods as well as traditional intermediaries.<sup>19</sup> Jurisdictions will generally exclude excisable goods (alcohol, tobacco, etc.) from access to VAT relief and may also exclude certain retail products such as newspapers and magazines. Jurisdictions also sometimes deny relief to importation of broader categories of products, including medical products and animals, while other jurisdictions apply geographical exclusions to goods from specified territories.
- Consignments above both the customs duty and the import VAT relief thresholds generally require a customs declaration or equivalent submission.<sup>20</sup> Standard practice is for customs authorities to calculate VAT based on the customs value of the goods after taking account of customs duties, transport and other ancillary costs. Jurisdictions will sometimes treat goods differently depending on whether the supplier shipped them via postal operators (under the Universal Postal Convention) or through other carriers.
- The customs duty exemption threshold for consignments may often be higher than the VAT exemption threshold. Consignments falling between the two thresholds are then subject to import VAT but not to customs duties. Simplified customs declaration procedures may be available for consignments of this nature. Historically, several millions of consignments in the European Union have fallen between the two thresholds each year because of the large difference in their levels.

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<sup>18</sup> In addition to the collection of taxes, customs procedures are also concerned inter alia with facilitating trade and ensuring border security. For a short account of customs procedures on importation of low-value goods, see the 2015 BEPS Action 1 Report, “Annex C: The collection of VAT/GST on imports of low value goods”, in particular pages 185 to 193.

<sup>19</sup> Jurisdictions’ definitions of ‘mail order’ are often very broad and typically can cover any arrangement between a business and a customer under an organised system without the simultaneous physical presence of the two parties at the time of sale and supported by distance-selling techniques. In practice, these definitions usually cover orders that customers make by telephone, Internet, or from catalogues where the business making the sale is in charge of transporting the goods to the customer.

<sup>20</sup> The procedural obligations and the way in which they are described vary from one jurisdiction to another.

- The customer must usually pay VAT due via a transport operator.<sup>21</sup> Transporters' handling fees for consumers are typically between USD 10 and USD 25 but can be much higher.<sup>22</sup> Moreover, in many instances these charges are exempt from VAT, creating an opportunity cost for governments in raising tax revenues from consumers' finite spending resources.
- Finally, consignments of a non-commercial character sent from abroad by one private individual to another (consumer-to-consumer, C2C) may benefit from a higher VAT low-value consignment relief threshold. Normally these transactions are of an occasional nature, contain only goods intended for personal or family use by consignees, and involve no consideration or payment of any kind.

In summary, the combined effect of a VAT exemption for low-value consignments and a customs duty threshold will lead to three different possible outcomes depending on the value of the goods:

- No VAT or customs duties are payable; or
- VAT is payable but no customs duties are payable, for goods with a value above the VAT threshold but below the customs duty threshold; or
- Both VAT and customs duties are payable.

### *(ii) VAT challenges of low-value consignment reliefs*

The rise of the digital economy has given consumers the freedom to order goods online from suppliers all over the world without regard to their physical place of business. The reality is that suppliers increasingly seek to tap global markets, with volumes of international B2C consignments continually increasing. This is a global phenomenon and the socio-economic consequences of the COVID-19 pandemic give it additional impetus.

In Latin America, it was estimated that in 2020, 191.7 million individuals, or 38.4%, of the region's population aged 14 or older, would make an e-commerce purchase (Matteo Ceurvels, 2020<sup>[43]</sup>). Notwithstanding economic precarity in the region and the impact of the COVID-19 pandemic on consumer spending, analysts expected retail e-commerce sales growth in Latin America by 19.4% to USD 83.63 billion in 2020 (Matteo Ceurvels, 2020<sup>[43]</sup>). The growth of digital trade in the LAC region is further analysed in subsection 2.3.2.

Neutrality is fundamental to any functioning VAT system (OECD, 2003<sup>[44]</sup>). Yet with rising levels of e-commerce, jurisdictions have found that VAT reliefs for low-value consignments have turned into a significant obstacle to VAT neutrality, offering unfair competitive advantages to non-resident sellers. The OECD and G20 have identified this as one of the main VAT challenges of the digital economy.<sup>23</sup> One of the consequences of these neutrality challenges is the possible triggering of relocations of some domestic businesses offshore. The incentive to relocate results from the fact that domestic retailers that are required to register for VAT in the jurisdiction where they are located must generally charge and remit VAT on all domestic sales. These businesses may decide to relocate abroad to benefit from the low-value consignment relief to sell VAT-free online. The development of the so-called 'fulfilment house' industries, which provide warehouses for non-resident online sellers to store their goods that are for sale both within the jurisdictions of their customers and in neighbouring territories, has exacerbated the challenges. The fulfilment houses enable non-resident suppliers to optimise delivery times to domestic consumers and

<sup>21</sup> Australia, New Zealand, and Norway are exceptions to the rule.

<sup>22</sup> In practice, postal operators and couriers will normally charge end consumers an administrative fee for customs clearance services.

<sup>23</sup> See BEPS Action 1 Report, in particular "Annex C: The collection of VAT/GST on imports of low value goods", pages 181 to 220.

improve the overall customer experience for online orders. However, non-resident suppliers that utilise the services of fulfilment houses have often been found not to comply with the domestic VAT obligations that arise for supplies they make through them, whether through ignorance or deliberate attempts to evade them.

In addition to the challenges to VAT neutrality, there are potentially significant detrimental financial consequences to the traditional customs framework for VAT collection on imports. These comprise major loss of VAT revenues that jurisdictions do not collect because of exemptions for low-value goods, direct revenue loss due to non-resident suppliers committing fraud, and indirect loss due to domestic suppliers relocating offshore. VAT low-value consignment reliefs also may have negative consequences for domestic employment and direct tax revenues.

A comprehensive study undertaken by the European Union identified more than 144 million consignments as benefitting from the VAT exemption for low-value consignments in 2015.<sup>24</sup> This was an increase of more than 300% since 2000.<sup>25</sup> The VAT forgone from the exemption for the importation of low-value consignments was estimated as amounting to up to EUR 1 billion (nearly USD 1.14 billion) annually,<sup>26</sup> a figure likely much higher today. An earlier EU study starkly illustrated the long-term growth trend in the level of VAT revenues that countries were not collecting because of low-value consignment reliefs. The study estimated that VAT forgone in the European Union under the relief provisions grew from EUR 118 million (nearly USD 135 million) in 1999 to EUR 535 million (nearly USD 611 million) in 2013, an increase of 355% in 14 years (European Commission and EY, 2015<sup>[45]</sup>). This increase in the volume of trade and of VAT revenues forgone was in line with the increase in individuals shopping online in the European Union. For example, the study noted that the volumes of goods that postal operators handle annually grew from approximately 30 million consignments in 1999 to approximately 115 million in 2013, a total increase of 286% (European Commission and EY, 2015<sup>[45]</sup>). However, this took place in the context of an increase of EU GDP of just 50% over the same period. Since online trade in consumer goods is a growing and global phenomenon, the opportunity costs of the general status quo continue to increase.

### ***(iii) Compliance challenges – Widespread fraud and abuse of VAT low-value consignment reliefs***

In addition to the neutrality and opportunity cost challenges of low-value consignment reliefs described above, significant risks of fraud have been identified notably involving the following practices:

- Under-declaration of higher-value goods to benefit illegitimately from the VAT low-value consignment relief threshold
- Under-declaration of goods at an amount above the VAT exemption threshold but below the customs duty threshold, to reduce VAT obligations and for evasion of customs duty
- Mis-declaration of commercial goods as falling under VAT exempt categories such as gifts, C2C transactions, or samples

<sup>24</sup> See European Commission (2016), *Impact assessment – Modernising VAT on cross-border e-Commerce*, page 15 at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0379&from=ES>.

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.* at 13.

- Use of third parties to store low-value goods in domestically located warehouses or fulfilment centres, while treating the subsequent sale of such goods as international deliveries constituting VAT-free imports for the consumer<sup>27,28</sup>

Policing compliance with the reliefs means that customs authorities must attempt to assess many thousands of parcels every day at the country's busiest ports, airports, and parcel depots in order to verify that businesses have valued and appropriately classified them in their declarations. The practices outlined above have stretched customs authorities' capacities to their limit if not beyond.

A Copenhagen Economics study, based on a sample of 400 actual purchases, found that 65% of consignments arriving in Europe from non-EU suppliers through public postal channels were VAT non-compliant (Basalisco, Wahl and Okholm, 2016<sup>[46]</sup>).<sup>29</sup> This is significant as the same study estimated that businesses send about 70% of consumer goods orders through public postal channels.<sup>30</sup> The pattern is likely to be similar in many LAC jurisdictions.

Similarly, a report from the French Senate shows that the traditional customs-led VAT collection process is often ineffective in practice (Senat - Commission des finances, 2015<sup>[47]</sup>). The report mentions figures from the Roissy Airport ('Paris-Charles de Gaulle', the main airport for Paris) over the course of a year-long period during which 3.5 million express packages and 37 million postal packages arriving from non-EU Member States yielded a total VAT collection of only EUR 1.4 million (nearly USD 1.6 million) (Senat - Commission des finances, 2015<sup>[47]</sup>).

Work undertaken for the European Union has estimated EU Member States' annual VAT losses due to fraud and non-compliance in the declaration of imports are in the range of EUR 2.6 billion (nearly USD 3 billion) to EUR 3.8 billion (nearly USD 4.3 billion) (European Commission and Deloitte, 2016<sup>[48]</sup>). The same report goes on to observe that this estimate might 'be quite conservative' referencing the French Senate report above as well as UK figures that estimated losses in the United Kingdom alone at up to GBP 1.5 billion (nearly USD 1.9 billion) annually.<sup>31</sup>

Customs authorities have the power in theory to check whether suppliers have correctly valued goods and, in cases of under-declaration, to demand payment of any VAT and duties outstanding. Failure to pay by the customer should result in either a return to the consignor or the abandonment of the consignment. In practice, most customs authorities do not have the capacity to exercise this level of control on a comprehensive and consistent basis. The volumes of such parcels would overwhelm most customs authorities' processing capacity and the administrative costs associated with collecting tax on each consignment (including the costs of risk screening and other ancillary costs) would probably exceed the value of the VAT and duties actually due.

<sup>27</sup> This abuse has received widespread media attention. See: The Guardian (2017), *Online retailers failed to pay up to GBP 1.5bn in VAT last year, says watchdog* at <https://www.theguardian.com/politics/2017/apr/19/online-retailers-1bn-lost-vat-last-year-watchdog-nao-hmrc>

<sup>28</sup> See also UK Parliament (2016), *VAT evasion: Internet Retailers* at <https://publications.parliament.uk/pa/cm201516/cmhansrd/cm160114/halltext/160114h0001.htm>

<sup>29</sup> This study was undertaken on behalf of UPS and involved extensive test purchases from e-commerce platforms located in the United States, Canada, Japan, India and China with delivery to a range of EU destinations. Express operators handled 50% of the purchases and public postal operators the other 50%. VAT was due on all the consignments; customs duties were due on 45% of the consignments.

<sup>30</sup> *ibid.*

<sup>31</sup> See figures from HM Revenue & Customs (2016), *Fulfilment House Due Diligence Scheme*, page 4 at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/507610/Fulfilment\\_House\\_Due\\_Diligence\\_Scheme\\_-\\_HMRC\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507610/Fulfilment_House_Due_Diligence_Scheme_-_HMRC_consultation.pdf)

It is also often qualitatively difficult for customs authorities to accurately value a consignment when they do select it for inspection. Assessments of items frequently consume considerable time and resources. One study for the EU Commission found significant variation in the frequency of verification activity that different countries undertake for VAT and customs duty on imports. It found that the level of verification was generally very low (European Commission and EY, 2015<sup>[45]</sup>).

In addition to the existing resource constraints confronting most tax and customs administrations, the COVID-19 pandemic is likely to further constrain these scarce public resources by driving increases in online commerce. Non-compliance resulting from fraudulent under-declaration and mis-categorisation of imports is not always easy to measure but the evidence shows it is widespread and significant. Jurisdictions should accordingly attempt to take account of the direct and indirect impacts of fraud when calculating the opportunity costs of not reforming the traditional system for VAT collection on imports of low-value goods.

#### *(iv) High administrative costs of the traditional collection framework*

An EU Commission study analysed the high level of administrative costs for tax administrations and businesses alike in handling imports of low-value goods for VAT and customs duty compliance purposes (European Commission and Deloitte, 2016<sup>[48]</sup>).<sup>32</sup> Extensive research involving stakeholder consultations, external expert studies, and in-house research confirmed the view that the traditional VAT regime for international B2C sales of goods is disproportionately burdensome for tax administrations to ensure compliance and is costly for many businesses in fulfilling compliance obligations. The Australian government's Productivity Commission and its Low Value Parcel Processing Taskforce noted similar challenges regarding collection costs associated with border collection of VAT.<sup>33</sup> The situation for jurisdictions in the LAC region is likely to be very similar.

In addition to the collection of taxes, customs procedures are also concerned, *inter alia*, with facilitating trade and ensuring border security.<sup>34</sup> There is hence need to maintain a customs infrastructure, for reasons independent of exercising tax control. However, it is likely that the VAT revenues resulting from customs authority assessments are often insufficient to amortise even the marginal costs of collection on an ever-increasing volume of low-value parcels.

Furthermore, the relative lack of administrative burdens for non-resident suppliers of low-value goods exacerbates the financial advantage that they enjoy from VAT low-value consignment relief.<sup>35</sup> By contrast,

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<sup>32</sup> Administrative costs reflect those associated with intra-EU B2C distance sales of goods as well as sales originating outside the European Union.

<sup>33</sup> The main reports that cover this subject include:

- Productivity Commission (2011), *Economic Structure and Performance of the Australian Retail Industry*, Report No.56. See in particular "Chapter 7: Appropriateness of current indirect tax arrangements", pages 169 to 214, and "Appendix H: Impacts of reducing the LVT" at <https://www.pc.gov.au/inquiries/completed/retail-industry/report/retail-industry.pdf>
- Australian Department of the Treasury (2012), *Low Value Parcel Processing Taskforce: Final Report - July 2012* at <https://treasury.gov.au/publication/low-value-parcel-processing-taskforce-final-report>
- Productivity Commission (2017), *Collection Models for GST on Low Value Imported Goods*, Report No.86 at <https://www.pc.gov.au/inquiries/completed/collection-models/report/collection-models.pdf>

<sup>34</sup> For a short account of customs procedures on importation of low-value goods, see the 2015 BEPS Action 1 Report, "Annex C: The collection of VAT/GST on imports of low value goods", in particular pages 185 to 193.

<sup>35</sup> The importer rather than the non-resident supplier of the good is usually responsible for accounting for the tax. In effect, this means that a significant burden relating to imports of low-value goods is transferred to the authority, postal operators/express carriers, and individuals.

VAT-registered domestic businesses will often face extensive domestic compliance obligations both in selling to domestic consumers and in importing stock from outside the jurisdiction.

On the other hand, the uncertainties inherent in legacy VAT collection systems for imports can lead to negative consequences for non-resident suppliers too. Consumer dissatisfaction with unexpected VAT and administrative fees can lead to costly returns or a reluctance to repeat order.

### **3B.1.2. Reassessing the appropriateness of the traditional collection framework – The 2015 BEPS Action 1 Report and the impetus towards reform**

#### ***(i) The BEPS Action 1 Report – Overview of the indirect tax challenges of the digital economy***

The BEPS Action 1 Report addresses the tax challenges of the digital economy in general. As part of this undertaking, the report provides substantial analysis of the challenges that the digital economy creates for VAT collection on international supplies of low-value goods. It is important to note for context that this subject is by no means the principal or exclusive focus of that report. After summarising the fundamental principles of taxation (direct and indirect) and describing the evolution of the digital economy, the business models it has spawned thus far, and the opportunities it provides for BEPS activities, the report focuses in more detail on the direct and indirect challenges raised by the digital economy and the options to address them.

In the VAT context, the BEPS Action 1 Report gives substantial consideration to the challenges associated with the collection of VAT arising from the strong growth in international B2C supplies of remotely delivered services and intangibles. The Toolkit has already analysed the OECD policy framework for services and intangibles in detail at Section 3A and so will not provide further explanation here in 3B of the parts of the BEPS Action 1 Report that address that framework.

#### ***(ii) Tax challenges associated with imports of low-value goods***

The BEPS Action 1 Report identified major challenges regarding collection of VAT as a result of the rapid growth of e-commerce and in particular, online purchases of physical goods made by consumers from suppliers in another jurisdiction. It highlighted that VAT reliefs for imports of low-value goods result in decreased VAT revenues and unfair competitive pressures on many domestic retailers who are generally required, depending for instance on their size, to charge VAT on their sales to domestic consumers. In addition, the reliefs produce an incentive for domestic suppliers to locate or relocate to an offshore jurisdiction in order to sell their low-value goods free of VAT. All of these consequences have additional negative impacts on domestic employment and direct tax revenues.

VAT reliefs for imports of low-value goods have therefore become increasingly controversial in the context of the growing digital economy. The difficulty lies in finding the appropriate balance between the need for revenue protection and avoidance of distortions of competition, which tend to favour a lower or no low-value consignment relief threshold, and the need to keep the cost of collection proportionate to the relatively small level of VAT at stake at an individual consignment level, which favours a higher threshold. Moreover, the sheer increase in volumes of consignments may result in the failure or inability to collect tax on most consignments, including those that exceed the threshold for relief, because of customs authorities lacking the capacity and resources to cope with these challenges.

The BEPS Action 1 Report highlighted that jurisdictions might be in a position to address the challenges associated with VAT low-value consignments relief, including a reduction in relief thresholds or even abolishing them altogether, if they could improve the efficiency of VAT collection on imports of low-value goods. In-depth research was carried out on possible options for more efficient collection of VAT on imports of low-value goods, and the outcome of this research was presented in “Low Value Imports Report”, which

was included in Annex C to the BEPS Action 1 Report. The report advises governments to consider these approaches in light of their domestic situation and their exposure to the VAT impacts of imports of low-value goods resulting from the growth of the digital economy.

The following subsection, 3B.2, will briefly summarise the key findings of the Low Value Imports Report, qualifying these findings with the insights and results of jurisdictions' experiences over recent years. It will then outline the OECD's principal recommendation for reform of the traditional, customs authority-led framework for VAT collection on international supplies of low-value goods. In summarising the report's findings, the Toolkit will note where experience and further work since the report's publication in 2015 has resulted in refinement of earlier conclusions.

## 3B.2. VAT collection on international B2C supplies of goods – Summary of possible options

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This subsection explores the main available models for collecting import VAT as set out in Annex C to the BEPS Action 1 Report that could limit or remove the need for customs authorities to intervene in VAT collection for imports that are below the *de minimis* or low-value consignment relief threshold for customs duties.<sup>36</sup>

Models that achieve this outcome would significantly lower the cost of collection of VAT on imports of low-value goods. VAT on imports of goods above the customs threshold could (continue to) be collected together with customs duties and taxes under normal customs procedures. At the same time, it should be recognised that customs authorities will continue to play an important role, notably in ensuring the safety and security of the value chain, e.g. detection and prevention of the unlawful movement of illicit and counterfeited goods.

Since the publication of the BEPS Action 1 Report in 2015, certain jurisdictions have taken measures to reform collection of VAT on international supplies of low-value goods and the OECD has also conducted

<sup>36</sup> Most jurisdictions operate a *de minimis* threshold for customs duties, which is essentially regulated by the World Customs Organization's (WCO) Revised Kyoto Convention (RKC). It provides for mandatory *de minimis* customs duties and tax relief for small consignments. While this rule is obligatory for Contracting Parties to the RKC, the RKC does not prescribe the amount of such a threshold nor does it impose a minimum standard.

further work on policy questions that bear directly on this subject. The Toolkit will therefore note where jurisdictions' experiences and further OECD work have resulted in refinement of earlier conclusions.

### **3B.2.1. The traditional collection model**

The traditional, customs authority-led model for the collection of VAT on imports of low-value goods is generally not an efficient model, particularly as importation volumes increase (see subsection 3B.1.1 for further detailed discussion). The efficiency of the traditional collection model may improve over time as electronic systems for pre-arrival declaration and advance electronic VAT assessment and payment are implemented worldwide to replace paper-based and manual verification processes. These are an increasing feature of the regulatory environment for international consignments even independent of tax-related imperatives (European Commission, n.d.<sup>[49]</sup>).

These electronic processes are already prevalent in the express carrier environment where they have resulted in considerable efficiency gains. Express carriers will generally transmit the data and documents that suppliers provide them in electronic format to the customs authorities in both the country of export and the country of destination. The customs authorities at destination can perform initial risk assessments prior to the shipment's arrival in the country. Complementing electronic processing, including advance cargo information, with advance payment of duties and taxes allows customs authorities to clear most goods upon arrival without assessment for revenue collection purposes.

However, use of electronic processes for declaration and settlement of taxes and duties on imports is much less frequent among postal operators. As noted, postal services still handle the bulk of parcels generated by international online B2C trade and (as of early 2021) still administer transport of these goods by predominantly paper-based means. The worldwide implementation of electronic processes among a critical mass of postal operators across key markets might allow the removal of the current VAT low-value consignment relief thresholds. These systems are still under development in the postal environment and may be available only in the medium-to-long term, as it will take some time for them to be universally accessible.

Ultimately, however, enhancements in the use of electronic processes and systems by transporters will not address the principal flaw of the traditional collection framework, namely, its reliance on customs authorities to police compliance at an individual consignment level. This legacy system will continue to reflect its main disadvantages of labour intensiveness and vulnerability to fraud.

### **3B.2.2. The purchaser collection model**

A model relying on the purchaser to self-assess and pay the VAT on its imports of low-value goods is not likely to provide a sufficiently robust solution for an efficient collection of the tax. Although the purchaser collection model is likely to involve only limited compliance burdens for vendors, the level of compliance by purchasers is expected to be low. This is because many millions of ordinary household consumers would be responsible for the majority of purchases of low-value goods, in terms of both volumes and value. The majority of consumers will have very limited knowledge of tax and VAT laws and those that do may quickly identify numerous means at their disposal to avoid or evade their obligations. This model thus carries the risk of an unacceptably high level of non-compliance. In addition, this model would be highly complex and costly for customs and tax administrations to implement, operate and enforce.

### **3B.2.3. The vendor collection model**

The "vendor collection model" envisions non-resident suppliers registering for and collecting VAT on international supplies of low-value goods that they make into a jurisdiction. This model would focus on international B2C supplies and the OECD would advise jurisdictions to ensure its success by creating a

simplified registration and collection mechanism for non-resident suppliers to utilise in fulfilling their obligations.

A simplified compliance model for non-resident suppliers is a central component of the policy framework that the OECD recommends for international supplies of goods. For this reason, the following subsection, 3B.3.3, will devote more extensive attention to it and this subsection will refrain from further coverage to minimise duplication.

### **3B.2.4. The intermediary collection model**

“Intermediary collection model” is an umbrella term that covers one of the designated intermediaries participating in a transaction with prescribed obligations for collecting and remitting VAT on behalf of non-resident suppliers. Any intermediary upon which governments impose these obligations would need access to certain minimum amounts of information to permit it to assess and remit the right amount of VAT to the country of importation. The model would minimise VAT registration and collection burdens on non-resident suppliers that utilise the intermediaries. However, the intermediaries may experience additional costs of compliance that they would pass on to consumers and suppliers. This model may be particularly attractive to tax authorities in the jurisdictions of consumption if the intermediaries have a presence in the jurisdiction, e.g. express carriers, postal operators, fulfilment centres and locally established digital platforms. These intermediaries would generally have a much stronger understanding of local tax and customs rules and procedures than non-resident suppliers.

Four principal types of potential intermediaries may be identified:

- **Postal operators:** The discussion of the “traditional collection model” above highlighted significant challenges to that model, which result from the limited state of technological advancement in the postal operator environment. For the same reasons, the vast majority of postal operators would not have the appropriate systems in place to directly manage the assessment and collection of VAT on imports of low-value goods.
- **Express carriers:** In the express carriers’ environment, electronic data collection and transmission systems that enable a relatively efficient collection and remittance of import VAT are often already in place and such VAT collection and remittance to the authorities by express carriers is already common practice. Express carriers collecting VAT on imports of low-value goods could provide an efficient and effective solution for the consignments they transport, perhaps most helpfully as a fallback to a principal preferred model for VAT collection. Indeed, jurisdictions would need an alternative model for the vast majority of international B2C consignments, which suppliers send through the postal channel. They may also benefit from providing a simplified compliance regime for the express carriers and fast-track processing for consignments on which they collect VAT.
- **Digital platforms:** Assigning a central role to digital platforms, including implementation of a full VAT liability regime, is a main component of the policy framework that the OECD recommends for international supplies of goods. For this reason, the following subsections, 3B.3.4 and 3B.5 will devote more extensive attention to such platforms and this subsection will refrain from further coverage to minimise duplication.
- **Financial intermediaries:** Most financial intermediaries do not collect the necessary information for the assessment and collection of VAT on low-value imports. Accordingly, the development of a model relying on financial intermediaries to collect and remit VAT on imports would involve fundamental changes in their data collection processes. It is therefore considered unlikely that financial intermediaries could play a leading role in a more efficient collection of VAT on imports of low-value goods in the short-to-medium term. Please see Annex B, in conjunction with subsections 4A.1.4 and 4B.1.3, for a detailed analysis of the role of financial intermediaries.

### 3B.2.5. Overall conclusion on options

The conclusion from this research in 2015, confirmed by the subsequent practical experience in an increasing number of jurisdictions, is that the most efficient and effective policy framework for collecting the VAT on imports of low-value consignments from online B2C sales is the one that combines VAT registration and collection obligations for non-resident suppliers (vendor collection) with a full liability regime for digital platforms where they play a central role in facilitating sales for such suppliers (intermediary collection). Subsection 3B.5, which follows, provides a further explanation as to the rationale and mechanics of this approach.

Under certain options for reform of the traditional customs collection framework, jurisdictions may wish to develop a fallback role for customs authorities or intermediaries such as transporters to address non-compliance by non-resident suppliers of low-value goods. Enhancement of international administrative co-operation between tax authorities will also improve efforts towards increasing compliance and undertaking enforcement actions.

To avoid double taxation, jurisdictions should put in place rules to provide clarity as to when different parties have an obligation to collect in a wide range of possible scenarios and should support these rules with processes that allow relevant parties, especially customs authorities, to verify whether another party has already collected VAT on a supply.

## 3B.3. Reassigning responsibility for VAT collection on imports of low-value goods to non-resident suppliers and digital platforms

### Guide to subsection 3B.3.

| <i>Section</i> | <i>Theme</i>   | <i>Page</i> |
|----------------|--|-------------|
| 3B.3.1.        | <i>Understanding the rationale for the recommended reform</i>  | 114         |
| 3B.3.2.        | <i>Recommended approach: Alignment with the recommended policy framework for services and intangibles</i>      | 114         |
| 3B.3.3.        | <i>Establishment of an effective collection mechanism: The simplified registration and collection regime</i>   | 115         |
| 3B.3.4.        | <i>Establishing a central role for digital platforms, including full VAT liability and information sharing</i> | 115         |
| 3B.3.5.        | <i>Jurisdictions to which this recommendation may not apply</i>  | 115         |
| 3B.3.6.        | <i>Distinct elements of the policy framework for imports of low-value goods</i>                                | 115         |

Jurisdictions are recommended to assign responsibility for the collection of VAT on international B2C supplies of low-value goods to the non-resident suppliers that sell them. By definition, this means reassigning responsibility away from customs authorities in most circumstances to prevent double taxation. Subsection 3B.6 discusses certain exceptions to this general principle.

This recommendation draws on both the analysis of the BEPS Action 1 Report and, more importantly, on the experience of several jurisdictions in implementing measures to reform VAT collection for imports of low-value goods since the publication of the report in 2015.

### **3B.3.1. Understanding the rationale for the recommended reform**

Subsection 3B.1 outlined the pressures that the growth of international online B2C sales of low-value goods creates for traditional customs frameworks, emphasising that the associated VAT challenges are increasingly significant and can affect almost all countries. This subsection assumes that policymakers and administrators are aware of this background.

### **3B.3.2. Recommended approach: Alignment with the recommended policy framework for services and intangibles**

The recommended policy framework for the collection of VAT on international B2C supplies of low-value goods builds on the same foundations as that for the collection of VAT on B2C supplies of services and intangibles by non-resident suppliers. This subsection assumes that readers are familiar with the policy framework that the OECD recommends for imposing and collecting VAT on international B2C supplies of services and intangibles (see Section 3A of the Toolkit).

For all of these types of supply, jurisdictions face a directly analogous challenge in collecting VAT on sales to their consumers by non-resident suppliers that have no physical presence in the jurisdiction of taxation.<sup>37</sup> In all of these cases, the OECD has concluded that the optimal approach is to impose VAT collection obligations on non-resident suppliers and to facilitate compliance for these non-resident suppliers by implementing a simplified registration and collection regime.

At the current time, other alternative options are unlikely to be reasonable or viable as the principal means by which jurisdictions achieve effective, accurate and timely collection of VAT on international digital trade. This notably means that withholding and remittance by consumers do not have realistic prospects at present. As elaborated in subsection 4A.1.4, withholding by financial intermediaries as primary collection mechanism is not likely to be a viable option in the short-to-medium term, although jurisdictions and the financial services industry could jointly study and develop models with a view to testing and establishing their viability over the long term.

Levels of compliance by non-resident suppliers with their VAT obligations under simplified registration and collection regimes have been found to be high in the jurisdictions that have implemented such a regime, including in respect of B2C online supplies of low-value goods. Large businesses with a strong internal culture of corporate governance and of compliance with VAT obligations often represent a high share of international sales of goods into a jurisdiction in terms of value, if not in volume. Many smaller and medium-sized businesses, representing the majority of sales in volume terms, will sell primarily through established digital platforms. The digital platforms have the same robust corporate governance principles as embraced by other large international businesses on the issue of compliance with VAT obligations and supporting jurisdictions' full enforcement of such obligations.

A non-resident supplier registration approach will help administrations to reduce administrative costs by overcoming some of the main challenges of the traditional system (see subsection 3B.2.1). Rather than relying on customs authorities to collect VAT and police compliance at an individual consignment level, such an approach focuses on platforms or suppliers' overall low-value goods revenue from sales into a jurisdiction thus allowing increased administrative efficiency. The possibility for consumers to pay VAT-inclusive prices when they order goods instead of having to pay import VAT upon reception or importation of the goods may further promote such an approach.

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<sup>37</sup> The references to circumstances "where the supplier is not located in the jurisdiction of taxation" is embodied in the official title of the "Collection Mechanisms Report" and is used in the Guidelines and other OECD guidance to refer to cases "where the jurisdiction of taxation may have limited or no authority effectively to enforce a collection obligation upon the supplier". See Collection Mechanisms Report ("Glossary of terms").

For the foregoing reasons, the Toolkit recommends that jurisdictions seek to maximise compliance and, consequently, VAT revenues by aligning their policy framework for goods with certain key building blocks of the policy framework for services and intangibles. These are:

- Establishment of effective collection mechanisms; and
- Establishing a central role for digital platforms

### ***3B.3.3. Establishment of an effective collection mechanism: The simplified registration and collection regime***

It is recommended that jurisdictions establish a simplified compliance regime for non-resident suppliers making B2C supplies of low-value goods into their jurisdiction. They can utilise the same administrative and operational infrastructure that they employ for simplified registration and collection for VAT on international supplies of services and intangibles. Subsection 3A.3 comprehensively summarises the policy and administrative design decisions that jurisdictions need to make in establishing a successful simplified compliance regime.

### ***3B.3.4. Establishing a central role for digital platforms, including full VAT liability and information sharing***

Jurisdictions can significantly enhance effective VAT collection and administrative efficiency by assigning full VAT liability to digital platforms for international B2C supplies of low-value goods that underlying non-resident suppliers make through these platforms. Full VAT liability should apply only in certain defined circumstances. Subsection 3A.4 comprehensively summarises the role that digital platforms can play. Its analysis applies equally to international B2C supplies of low-value goods that underlying non-resident suppliers make through digital platforms (see further 3B.4, 3B.5 and 4C.2.3).

### ***3B.3.5. Jurisdictions to which this recommendation may not apply***

It is recognised that policymakers and administrators in some jurisdictions may need to consider the costs and benefits of reforms in respect of imports of low-value goods with particular care. This could notably include small jurisdictions (e.g. some of the smallest Caribbean jurisdictions) in which volumes of imports of low-value goods are small and entry into the jurisdiction takes place at no more than one or two international shipping and transit hubs. In these limited cases, the traditional collection framework may still be a viable option in the short-to-medium term.

### ***3B.3.6. Distinct elements of the policy framework for imports of low-value goods***

The design and implementation of the recommended regime for the collection of VAT on international B2C supplies of low-value goods requires consideration of a number of specific aspects that do not apply in the context of international B2C supplies of services and intangibles. These include the following in particular:

- **Interactions with customs authorities:** A model based on imposing collection responsibilities on non-resident suppliers is likely to involve considerable changes to existing customs and tax collection processes and systems. Enhanced international and inter-agency co-operation may be necessary to enforce compliance. Increased administrative burdens for the tax authorities are probable in the short-to-medium term, as implementation is likely to involve significant systems changes and reforms to existing customs processes if a jurisdiction is to avoid double taxation or unintended non-taxation. This includes impacts on the following elements of the customs clearance process:
  - **Mechanisms to avoid double taxation** – See subsections 3B.5.2 and 4B.3.

- **Fast-track clearance of consignments** – See subsections 3B.5.2 and 4B.4.
- **VAT and Customs Duty Low-Value Consignment Relief thresholds** – See subsections under 3B.7 and 4B.4.
- **Determination of the place of taxation** – See subsection 3B.8.

The remainder of Section 3B will focus on the different policy choices that jurisdictions will need to make and steps they are recommended to follow in building an effective policy framework for simplified VAT compliance regime for imports of low-value goods.

Section 4B of the Toolkit provides detailed guidance for jurisdictions on building the supporting administrative and operational infrastructure for simplified VAT compliance regime for imports of low-value goods.

### 3B.4. The role of digital platforms in VAT collection on international B2C supplies of low-value goods

A relatively small group of large businesses and digital platforms dominate the global trade in online sales of goods (see Section 2). In many cases, they have become household names in large parts of the world. Digital platforms are uniquely placed to exercise a strong degree of economic control over underlying non-resident suppliers in situations where tax authorities may have limited leverage over these suppliers when it comes to enforcing tax obligations.

Section 3A of the Toolkit provides a thorough summary of the different roles that digital platforms can play in the collection of VAT on supplies of services and intangibles by non-resident suppliers (see notably subsections 3A.4.2, 3A.4.3 and 3A.4.4). These roles can apply equally to international B2C supplies of low-value goods as to supplies of services and intangibles.

In addition to a “full VAT liability” regime, which the following subsection discusses, these different roles for digital platforms to support the collection of VAT on online sales by non-resident suppliers can include:

- Information reporting or sharing obligations.
- Obligations and encouragement to educate underlying suppliers
- Formal agreements between tax authorities and digital platforms based on the co-operative compliance concept
- Digital platforms acting as a voluntary intermediary for VAT collection
- Joint and several liability for digital platforms and other key intermediaries such as fulfilment houses

## 3B.5. Full VAT liability for digital platforms facilitating international B2C supplies of low-value goods

### Guide to subsection 3B.5.

| <i>Section</i> | <i>Theme</i>   | <i>Page</i> |
|----------------|--|-------------|
| 3B.5.1.        | <i>Addressing the VAT challenges of new commercial practices – The ‘Fulfilment House’ model</i>        | 118         |
| 3B.5.2.        | <i>Incentivising compliance by digital platforms and rewarding a strong track record of compliance</i> | 119         |
| 3B.5.3.        | <i>Enforcing compliance by digital platforms</i>   | 119         |

A comprehensive analysis of the full VAT liability regime for digital platforms is provided in subsection 3A.4 of this Toolkit. It includes detailed discussion of the rationale, mechanics and scope of such regimes. Section 4 provides advice for the administrative and operational implementation of such a full liability regime for digital platforms.

Australia, New Zealand and Norway have already implemented regimes that extend VAT registration and collection requirements for non-resident suppliers of low-value goods to include full VAT liability for digital platforms. The early results in numbers of registrations and the revenue that these regimes generate have been very good (see further Figure 4A.1 under Section 4A). They provide important learning experience for other jurisdictions looking to adopt this approach. The United Kingdom has applied this approach as of 1 January 2021, and the European Union applies this approach effective 1 July 2021 (see Box 3B.1). Singapore has announced that it will do so from 1 January 2023.

### Box 3B.1. Example of a full VAT liability regime for digital platforms on international supplies of low-value goods – The EU model

EU legislation for a full VAT liability regime for digital platforms is effective on 1 July 2021. The legislation deems platforms as the supplier for VAT purposes when they facilitate “distance sales” (i.e. imports) of goods by any supplier or sales of goods by non-resident suppliers when the goods are already located on EU territory at the time of sale (e.g. when suppliers store goods in domestic fulfilment houses prior to sale).

Regarding distance sales, the law applies to goods below the customs duty low-value consignment relief threshold of EUR 150 (USD 171). Digital platforms and non-resident suppliers in general will benefit from customs authorities not subjecting imports to assessment for import VAT where the platforms and suppliers communicate that they have already collected VAT at the time of supply. Customs authorities will continue to collect VAT with the support of the transporter for goods with a value above the threshold. Underlying non-resident suppliers must continue to submit a full customs declaration for goods above the threshold.

For goods that non-resident suppliers are storing on EU territory at the time of sale, there is no item- or consignment-level value threshold for determining the digital platform’s full VAT liability. They must account for and collect VAT on all such goods.

Source: European Union (2017), Council Directive (EU) 2017/2455 (European Union, 2017<sup>[50]</sup>).

This subsection hereafter provides further reflections on a number of aspects of the full VAT liability model that are more specifically relevant for the application of such a regime to digital platforms facilitating international B2C supplies of low-value goods.

#### **3B.5.1. Addressing the VAT challenges of new commercial practices – The ‘Fulfilment House’ model**

Historically, the principal model that non-resident suppliers followed in making supplies into a jurisdiction was direct shipment of goods from an offshore location to the consumer. Over the last few years, new models have developed. They comprise an increasing share of international online trade in goods. The most prominent of these involves non-resident suppliers’ utilising a form of warehousing facility within the consumer’s jurisdiction, which policymakers more commonly refer to as ‘fulfilment houses’.

Digital platforms sometimes maintain their own fulfilment house business in a jurisdiction and market their fulfilment services to non-resident suppliers. In other instances, non-resident suppliers use independent fulfilment house businesses. Under the fulfilment house model, a non-resident supplier will agree with a fulfilment house services provider that the supplier can store its goods in bulk in one of the fulfilment business’s domestic fulfilment warehouses. This normally takes place prior to the receipt of any consumer orders for those goods. When a consumer makes an order, the non-resident supplier will be able to deliver the goods to the consumer rapidly and at a speed similar to that associated with domestic suppliers. As part of the agreement, the fulfilment house services provider will often arrange for postage or couriering of the goods from the domestic fulfilment house to the consumer’s home address.

In many instances, non-resident suppliers that make sales through domestic fulfilment houses meet the criteria for the obligation to register for VAT under the standard VAT registration framework. In practice, many of these suppliers make sales in the jurisdictions without registering. They may also practice undervaluation of their stock at importation to evade import VAT. This non-compliance and fraud can lead to very significant losses of VAT revenue for jurisdictions.

To address this problem, at least for supplies that digital platforms facilitate, jurisdictions can explicitly expand the legal basis of their full VAT liability regime for digital platforms to include all supplies (i.e.

domestic and international) made by underlying non-resident suppliers to consumers in the jurisdiction and not limit full liability obligations to non-resident suppliers' international consignments (i.e. imports) of low-value goods. The legislation in force for the full VAT liability regime for digital platforms in New Zealand does precisely this, as will the European Union's regime from July 2021 onwards (see brief case study on the EU model above in Box 3B.1).

Of course, expanding the scope of the full liability regime for digital platforms will not address non-compliance and fraud by non-resident suppliers that utilise domestic fulfilment houses to make direct sales to consumers through their own proprietary websites and social media accounts. Therefore, alternatively, or in addition, jurisdictions can combine these measures for platforms with educational activity to promote greater awareness of VAT obligations among both fulfilment house operators and non-resident suppliers. Jurisdictions may also leverage their enforcement power over domestic fulfilment houses by imposing robust record-keeping and/or information reporting obligations on them, possibly as a condition of licensing them to trade. The United Kingdom created a 'Fulfilment House Due Diligence Scheme' (FHDDS), which came into force on 1 April 2019 and incorporates elements of these record-keeping and information reporting obligations, allied to potentially high penalties, for fulfilment houses that serve clients that are non-compliant with UK VAT laws. Jurisdictions could also empower tax authorities to hold the fulfilment houses jointly and severally liable for the unpaid VAT of non-resident suppliers that utilise their services.

### ***3B.5.2. Incentivising compliance by digital platforms and rewarding a strong track record of compliance***

As in the case of non-resident suppliers generally, tax and customs authorities can incentivise compliance with a full liability model by providing fast-track clearance to consignments on which non-resident suppliers and/or digital platforms collect the VAT.

To facilitate fast-track clearance with reasonable assurance about compliance, the tax and customs authorities will need to implement effective infrastructure and coordinated processes for checking the VAT settlement status of all imports. This will also prevent customs authorities from subjecting goods to double taxation or unintended non-taxation. To ensure the smooth functioning of this infrastructure and related processes, digital platforms need to coordinate closely with underlying suppliers to ensure accurate and appropriate labelling and declarations for imports of low-value goods.

Tax authorities may wish to take a pragmatic approach on requirements for non-resident suppliers and/or digital platforms to determine the status of their customers (where the non-resident suppliers and/or digital platforms only have VAT obligations for B2C sales of low-value goods). This could include allowing digital platforms to rely on the information provided by the customer. Alternatively, tax authorities could establish some straightforward rebuttable presumptions whereby a platform has the right to presume that suppliers on the platform are businesses and that the purchasers are private consumers in the absence of evidence to the contrary.

### ***3B.5.3. Enforcing compliance by digital platforms***

Digital platform operators may not have an establishment or other presence in the jurisdiction of importation. This creates challenges for risk management and enforcement power. This is no less true of platforms that facilitate supplies of services and intangibles. However, for low-value goods, the consequences can be more politically charged and tangible because of how non-compliance may lead to large bottlenecks in ports and airports due to the strain it may place on customs authorities to undertake labour intensive verification processes on all consignments facilitated by a non-compliant platform. Section 4 of this Toolkit contains detailed guidance for jurisdictions on how to engage most effectively with non-resident digital platforms, at subsection 4C.4. Section 5 of the Toolkit describes enforcement strategies and measures at subsection 5.6 that jurisdictions can adopt to deal with non-compliant platforms.

## **3B.6. Determining exceptions to the principle that non-resident suppliers and/or platforms or other intermediaries are responsible for collecting VAT on international B2C supplies of goods**

### **3B.6.1. Background on exceptions**

The recommendations to reassign the responsibility for VAT collection on the importation of low-value goods to non-resident suppliers and/or digital platforms or other intermediaries can in principle apply to the large majority of international B2C sales of goods. However, it will generally be more efficient for customs authorities to continue collecting import VAT for certain types of consignments. These exceptions will relate primarily to the following:

- Goods with a value above any applicable low-value consignment relief thresholds for customs duty; and
- Categories of goods to which tax and customs authorities apply additional taxes or extra regulatory scrutiny

In practice, these exceptional categories will mainly include goods subject to excise duty (“excisable goods”). Some jurisdictions also impose special rules and regulatory requirements for the customs treatment of other goods, including medical products, animal products, and particular retail products. Sometimes special rules and restrictions apply only when consumers purchase above prescribed quantitative limits. Finally, for political and regulatory reasons, jurisdictions sometimes prohibit imports of particular products altogether, including those originating in specific geographic locations.

### **3B.6.2. Consignments above the relief threshold for customs duty**

Subsection 3B.7 addresses jurisdictions’ options for reform of the operation of low-value consignment relief thresholds for VAT and their relationship to equivalent thresholds for customs duties. For the purposes of the current subsection, it suffices to recommend that jurisdictions should continue to place responsibility on customs authorities for VAT collection on goods with a value above any applicable low-value consignment relief thresholds for customs duties. Standard rather than simplified customs declarations would also generally continue to apply to such goods.

Many jurisdictions calculate import VAT based on a customs value for goods that includes any customs duties due. To require non-resident suppliers to collect the right amount of VAT due on supplies subject to customs duty can create considerable complexity. To address these concerns, jurisdictions should provide non-resident suppliers with sufficient information to enable them to acquire a detailed understanding of the often very complicated tariff schedules and arrangements that determine whether and, if so, what level of customs duty applies to different goods.

### **3B.6.3. Products subject to excise duties and restricted products**

Jurisdictions normally levy excise duties on domestic suppliers at, or close to, the production stage, whereas customs authorities must collect the excise duties on imports at the time of importation. Excisable goods typically include alcohol, tobacco products and hydrocarbons but the list can be more extensive. Excise duties primarily raise revenue but jurisdictions do levy them to influence consumer behaviour, for example, for health and environmental reasons.

Excise duties usually function in tandem with VAT and can give rise to complex calculation rules, i.e. VAT will often apply to the price of the goods inclusive of excise duties. In the absence of specific arrangements to deal with these calculation complexities, jurisdictions can take a practical view and exclude excisable goods from the scope of simplified VAT registration and collection regimes for non-resident suppliers.

Some jurisdictions apply quantitative limits under which consumers can import small amounts of excisable goods without paying excise duty because the jurisdiction considers the goods to be of limited value as a source of revenue. If this presents no practical problems for suppliers, including compliance challenges, jurisdictions could include these excisable goods in the scope of a simplified registration and collection regime for non-resident suppliers of low-value goods. However, distinguishing whether consignments fall below any quantitative restrictions could create high levels of administrative burden for suppliers. This may notably be the case for highly regulated goods such as alcohol, tobacco and perfumes for which both product-specific importation thresholds and specific excise duties can apply. In this situation, jurisdictions would benefit from optimising efficiency of VAT collection by continuing to assign the collection obligation to customs authorities.

### 3B.7. Reforming the operation of VAT low-value consignments reliefs

#### 3B.7.1. Principal approaches to reforming of VAT low-value consignments reliefs

This Toolkit's recommendations for reforming the collection of VAT on the importation of low-value goods are based on the fundamental assumption that jurisdictions will also take the reform process as an opportunity to address the neutrality challenges that traditional VAT low-value consignment reliefs create and achieve significant administrative efficiencies at the same time.

The reassignment of VAT collection responsibilities from customs authorities to non-resident suppliers provides an opportunity to achieve these objectives by either reforming the way that VAT low-value consignment reliefs operate or by abolishing them altogether. Jurisdictions have taken **broadly two approaches** to this issue. This subsection will analyse the relative advantages and disadvantages of each approach. Section 4B provides further detailed guidance on the possible implementation and operation of these approaches. These approaches are:

- (i) "No VAT thresholds";
- (ii) "VAT registration and transactional thresholds".

#### 3B.7.2. No VAT thresholds

This "no-thresholds approach" generally includes the following elements:

- Abolishing VAT low-value consignment relief for imports of goods at item-level or consignment-level.
- Requiring or allowing non-resident suppliers of goods with a value below the customs duty low-value consignment relief threshold to final consumers in the jurisdiction, to VAT register and to collect and remit the VAT on these imports of low-value goods in that jurisdiction. This may apply without a VAT registration threshold. If the VAT is collected by the non-resident supplier there is no additional VAT on the import.
- Evaluating whether the existing customs duty low-value consignment relief threshold is optimal for achieving administrative efficiencies.

The European Union and Norway are examples of jurisdictions that have adopted an approach along these lines (see subsection 4B.2.4 for more details). Its advantage is that it results in VAT being due on all imports that consumers purchase from non-resident suppliers no matter how low the value of the goods. In theory, it should lead to the highest level of potential VAT revenue generation and comprehensively address the concerns of domestic businesses about a lack of a level playing field and unfair competitive advantages for non-resident businesses.

A disadvantage of this approach is that it risks creating comparatively higher administrative burdens for smaller non-resident suppliers and for customs and tax authorities. Customs authorities must be able to determine for each individual consignment whether the supplier has already collected VAT at the point of sale, in order to avoid double taxation or unintended non-taxation. To do this, they will need to impose certain reporting requirements on non-resident suppliers at the level of the customs declaration or labelling of consignment packaging. Alternatively, customs authorities could utilise a reasonable alternative proxy or a rebuttable presumption for assuming that the supplier has already collected any VAT due.

If large numbers of non-resident suppliers of low-value goods decide that the administrative burdens of registration and collection are too onerous relative to the level of supplies they make, they may decide either to stop making supplies to consumers in the jurisdiction or to continue doing so as unregistered suppliers, which may be in breach of the relevant laws and regulations if the registration and collection is mandatory. The former scenario would be detrimental to international trade. The latter would mean that customs authorities would have to devote considerable resources to assessing customs declarations and consignment records to determine whether import VAT is due on individual items or consignments. It would also mean that the tax administration would have to consider devoting considerable resources to compliance and enforcement actions.

The absence of a VAT threshold may lead in practice to a “*de facto* threshold” as customs or VAT administrations may not be in a position, or be willing, to undertake administrative action to stop such low-value consignments at the border or to try forcing small operators to comply.

Under this model customs authorities normally remain responsible for the collection of VAT on goods with a value above the low-value consignment relief threshold for customs duty. Jurisdictions should assess whether they have set the customs duty relief threshold at an appropriate level to optimise administrative efficiency. They could consider setting it at a much higher level than the historical threshold if this would substantially reduce the administrative burdens and costs of revenue collection for customs authorities. Examples of current international benchmarks include the customs duty threshold in the European Union of EUR 150 (USD 171), in the United States of USD 800 and in Australia of AUD 1 000 (USD 688).

### **3B.7.3. VAT registration and transactional thresholds**

This “threshold-based approach” generally includes the following elements:

- A VAT low-value consignment relief threshold for imports of goods at item-level or consignment-level. Under this approach, customs authorities will in general clear imports of items or consignments with a value below that level without assessment for import VAT.
- A revenue-based VAT registration threshold at supplier level, for non-resident suppliers of goods with a value below the VAT low-value consignment relief threshold to final consumers in the jurisdiction, and an obligation for these suppliers to register for and collect VAT on such low-value imported goods they sell once their revenues exceed the registration threshold. This registration threshold could be the same as the threshold for domestic suppliers.
- Possible harmonisation of the low-value consignment relief threshold at item-level or consignment-level for VAT with the low-value consignment relief threshold for customs duty, i.e. jurisdictions setting them at the same level.

Australia and New Zealand are examples of jurisdictions that have adopted approaches along these lines. Singapore has recently announced its intention to adopt a similar approach. The advantage is that a jurisdiction can raise considerable VAT revenues on low-value goods supplied by medium-size and larger non-resident suppliers while maximising administrative efficiency and neutrality between foreign and domestic businesses. This approach eliminates the burdens and costs for small and micro businesses of having to register for VAT. To enhance neutrality, the benefit is that jurisdictions can mandate that the VAT registration threshold for non-resident suppliers is the same as for domestic suppliers.

For consistency and neutrality between suppliers of different types of supply, the rules for any revenue-based VAT registration threshold are advised to require a non-resident supplier to aggregate revenues from all the B2C sales that it makes into the jurisdiction, whether of goods, services, intangibles or a combination of all of these.

Under this thresholds-based model, jurisdictions set an item-level or consignment-level threshold for low-value consignment relief for VAT on imports. This threshold could be set at the same level as the threshold for low-value consignment relief for customs duty to enhance administrative efficiency.

This overall approach to low-value consignment reliefs removes significant burdens on customs authorities of assessing VAT on the large quantities of items and consignments that fall below the relief thresholds. They can clear all parcels below the threshold for VAT purposes in the interest of facilitating the smooth flow of trade. This model also provides small and micro-size non-resident businesses with a legitimate route to make VAT-free supplies of low-value goods into a jurisdiction where their revenues are below the registration threshold.

Digital platforms facilitate the majority of supplies of low-value goods by non-resident businesses while large businesses making direct sales also contribute to a high proportion of such supplies. As subsections 3B.3.4 and 3B.5 note, this Toolkit recommends assigning full VAT liability to digital platforms under defined circumstances. Under this approach, customs authorities can operate on the assumption that non-resident suppliers and platforms liable to register will generally have done so and have charged VAT on low-value goods at the point of sale.

Customs and tax authorities may need to co-operate in developing mechanisms to identify non-compliance, but tax authorities will have overall responsibility for addressing this concern through post-customs risk management and compliance activity. Customs authorities would generally stop parcels for VAT collection purposes only in cases where they suspect that suppliers have fraudulently under-declared the value of higher-value goods in order to evade import VAT and customs duties.

The major disadvantage of a revenue and transactional thresholds-based approach is that the tax base is smaller than where jurisdictions set no thresholds for international B2C supplies of low-value goods. Politically, the ability of large numbers of smaller direct sellers to legitimately make VAT-free supplies under this model may create tensions with domestic suppliers and their advocates that feel aggrieved by the historical advantages that non-resident suppliers have enjoyed.

#### **3B.7.4. Recommendation for reforming VAT low-value consignment relief for imports**

Both the 'No VAT thresholds' and 'Registration and transactional thresholds' approaches will represent significant improvements to the situation that jurisdictions face in both revenue collection and neutrality under the traditional collection framework. A thresholds-based approach provides greater advantages in terms of reducing administrative burdens and minimising collections costs for customs authorities. It also provides for greater ease of doing business for smaller non-resident suppliers. However, jurisdictions may find it more straightforward to achieve domestic political consensus, and possibly higher overall revenues, on solutions that apply no registration or relief thresholds to international B2C supplies of goods.

### **3B.8. Determining the “place of taxation” for international B2C supplies of goods**

There is widespread consensus that the 'destination principle' should determine the rules establishing the allocation of VAT taxing rights as applied to international trade. Under the destination principle, VAT revenues should accrue to the country of import where final consumption occurs.

In contrast to the implementation of the destination principle in connection with the international supply of services and intangibles, where identification of the jurisdiction of consumption may be uncertain, implementation of the destination principle with respect to international trade in goods is straightforward,

at least in principle. When a transaction involves a business transporting goods from one jurisdiction to another, the jurisdiction to which it delivers the goods (as reflected in the delivery address for the consignment) is a very reasonable proxy for determining the jurisdiction of consumption in accord with the destination principle.

Additional corroborative evidence such as the jurisdiction of the bank account or credit/debit card that the consumer uses to make the payment and the IP address of the computer on which the consumer concludes the transaction may also be useful but they are not essential. In this connection, the guidance provided by the Guidelines, the Collection Mechanisms Report and the Platforms Report may be instructive.

Additional corroborative evidence can help to verify the place of delivery where the supplier has well founded reservations about the ultimate destination of the goods. For example, this might be the case if the consumer utilises the services of a ‘redeliverer’ to obtain products that it has struggled to purchase physically or through online channels serving its jurisdiction. In such a situation, the consumer may provide a non-resident supplier a delivery address that is the collection point of a well-known redelivery business. Section 4 of this Toolkit, at subsection 4C.3.3, discusses redeliverers and their potential role in VAT collection on international B2C supplies of goods in detail.

### 3B.9. International business-to-business (B2B) supplies of goods

In many jurisdictions, VAT simplification measures are in place regarding the commercial importation of goods, which help to minimise cash-flow disruption and administrative burdens for businesses. These usually include some form of ‘postponed accounting’. This means importing businesses can account on their periodic VAT return for the VAT both payable and recoverable on imports, rather than paying up-front at the point of importation. Jurisdictions can also provide similar benefits by authorising domestic business customers to utilise a ‘reverse charge’ mechanism on imports they acquire for the furtherance of their business, exactly as they can in most jurisdictions for international purchases of services and intangibles. Please see Section 3A, especially subsections 3A.2 and 3A.3, for further details. In the interest of sound management of risks, tax authorities may exercise discretion regarding the right of all non-resident suppliers to automatically enjoy such facilitation measures. Tax authorities may wish to perform enhanced due diligence on such suppliers before granting permission to utilise them.

### 3B.10. Introduction to designing legislation

The next step for policy officials is to design their jurisdiction’s VAT policy in respect of the rising volume of low-value goods that are imported as a consequence of the growth in online trade and to design and implement laws that give force to the policy framework.

Designing new laws can be a complex process. Successful implementation of new laws will require incorporating them effectively into an existing body of VAT law that will often be lengthy and the product of decades of complex amendments and superseding clauses. Jurisdictions must also be careful to align new VAT laws with customs laws and wider tax laws and other regulatory regimes for businesses.

To assist jurisdictions in this next step, the Toolkit presents a checklist of the main issues to consider in developing policy and legislation targeted at international business-to-consumer supplies of services and intangibles in Section 6.

Of course, there is not an easy one-size-fits-all standard solution for implementing the recommended solutions for the collection of VAT on digital trade into an existing VAT and legal framework. This Toolkit therefore emphasises that it is neither possible nor desirable to provide model legislation that tax authorities can or should simply transpose into national legislation. Jurisdictions should remain aware therefore that the guidance in Section 6 is not prescriptive. Jurisdictions should treat that Section as a set of non-exhaustive “checklists” to support policy design and not as “models”.

## **Section 3C. Addressing the VAT Implications of the Sharing and Gig Economy – The Potential Roles for Digital Platforms**

### 3C.1. Sharing and gig economy growth can create challenges for VAT policy and administration...but also important opportunities

The rise of the so-called sharing/gig economy (also known as the “collaborative economy”) in recent years has been remarkable at global and regional levels. It has been powered by the growing capacity of digital platforms to connect millions of economic actors with customers worldwide. The sharing/gig economy involves large numbers of new economic operators, often private individuals, who monetise underutilised goods and services by making them available for temporary (“shared”) use to primarily private consumers, via digital platforms.

The growth of sharing/gig economy activity has created a new commercial reality in a number of industries, particularly in the sectors of transportation (with the emergence of “ride-sourcing”) and accommodation (particularly in short-term rentals) and is also progressively transforming the professional services and finance sectors. It has triggered the entry into the market of considerable, and still growing, numbers of new economic actors carrying out activities in often new ways and with a non-standard employment or work status.

These “new ways of doing things” have raised questions whether existing VAT frameworks are sufficiently equipped to capture this new economic reality efficiently, notably to protect VAT revenues and minimise economic distortions between sharing/gig economy operators and traditional businesses. It also raises the question whether this new phenomenon, not least the role of sharing/gig economy platforms, creates new opportunities to enhance compliance and administration, and in particular, to help reduce the size of the informal economy.

Also the LAC region has seen significant sharing/gig economy development and growth. Large global sharing/gig economy platforms that operate across multiple countries have been expanding their services in the LAC region. In addition, locally and regionally dominant platforms have emerged that replicate typical sharing/gig economy platform services and that cater to region-specific needs and circumstances. Research has indicated that the population in the LAC region is particularly receptive to the idea of sharing assets (70%) compared to Europe (54%) and North America (52%), which is likely to offer further opportunities for sharing/gig economy diversification and growth in the region (Nielsen, 2014<sup>[51]</sup>). Brazil, Mexico, Argentina, and Peru are among the jurisdictions that have been at the forefront of sharing/gig economy development in the LAC region, having developed active local sharing/gig economy ecosystems. Sharing/gig economy activities in the LAC region have focused primarily on transportation and accommodation (IE Business School, 2016<sup>[52]</sup>). As digitalisation accelerates in the region (particularly, improved digital access through mobile devices; see Section 2.2) and the supply of freelancers continues to increase, the sharing/gig economy has the potential to grow and diversify further in the LAC region in the years to come (Beylis et al., 2020<sup>[53]</sup>).

This Section provides an overview of the core components of a comprehensive VAT policy strategy for tax authorities to consider in response to the growth of the sharing/gig economy. It notably includes detailed guidance on the considerable role that sharing/gig economy platforms can play in facilitating compliance in the sharing/gig economy, including in formalising informal economy activity. Of course, the sharing/gig economy gives rise to a variety of economic, social, tax, legal and regulatory questions beyond the area of VAT administration and compliance that require further consideration as part of a more holistic “whole-of-government” response to sharing/gig economy growth.

This Section builds on the analysis and guidance provided in the OECD report on *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (“Sharing/Gig Economy Report”). Readers of this Toolkit are encouraged to consult this OECD report for further detailed analysis and guidance on this issue.

### Box 3C.1. OECD Report on The Growth of the Sharing and Gig Economy and its Impact on VAT/GST Policy and Administration

This report provides a comprehensive analysis of the VAT implications of the growth of the sharing and gig economy and sets out the core components of a VAT policy strategy for tax authorities to consider in response. It analyses the key features of the sharing and gig economy and its main business models; identifies the associated VAT challenges and opportunities; and presents a range of possible measures and approaches to support an effective policy response. This includes detailed guidance on the possible role of digital platforms in facilitating and enhancing VAT compliance in the sharing and gig economy. The report is complemented with an in-depth analysis of the business models in the currently dominant sharing and gig economy sectors of accommodation and transportation. It has been developed by the OECD through intense consultation with representatives from OECD member countries and from a considerable number of non-OECD economies as well as the representatives of key sharing and gig economy actors and academia involved in the regular OECD discussions.

Source: OECD (2021), *The Sharing/Gig Economy Report* (OECD, 2021<sup>[6]</sup>).

### 3C.2. Developing a comprehensive strategy to address the VAT implications of the sharing/gig economy: possible steps for needs assessment and policy action

The sharing/gig economy presents specific features that can exacerbate existing challenges and/or opportunities for VAT policy and administration and create new ones. These specific aspects are notably related to,

- The characteristics of sharing/gig economy providers, which are often large numbers of new economic actors and/or non-standard workers with limited knowledge of/or capacity to comply with VAT requirements;
- The activities of these sharing/gig economy providers, which have often a relatively low value but are provided at relatively high volumes.

One of the key challenges for VAT policy and administration is that sharing/gig economy growth may result in considerable shares of activity in certain sectors shifting from established and largely compliant large operators (e.g., hotel chains, transportation firms) to large numbers of sharing economy operators and/or “gig workers” that may often be less compliant. Even where they are able or willing to comply, they may not be subject to VAT obligations if their activities remain below a jurisdiction’s VAT registration threshold. On the other hand, administrating these large numbers of new and often small sharing/gig economy operators could create significant pressure on tax administrations, particularly in jurisdictions with relatively limited tax administrative capacity.

Sharing/gig economy growth does however also create opportunities for tax authorities. In particular, the role of sharing/gig economy platforms in facilitating and centralising sharing/gig economy activities and the critical role of data in these platforms’ business models, creates significant opportunities to formalise informal economic activity through data-sharing and/or VAT-collection requirements for these platforms in respect of the sharing/gig economy activities that they facilitate.

The key policy motivations for the development of a VAT strategy in response to the challenges and opportunities associated with the sharing/gig economy growth are likely to differ across jurisdictions. These will depend on a number of factors, including the size and growth of (a sector of) the sharing/gig economy in a given jurisdiction, its possible impact on the VAT base and revenues, the competitive pressure it creates for the economic equivalent sector(s) and the opportunities it creates for formalising informal economy activity. Determining policy objectives in this area may turn out to be a moving target, notably as

the growth of the sharing and gig economy is still in its relatively early stages and continues to change and evolve, although it has already fundamentally transformed a number of industries.

Table 3C.1 below sets out the main components of a comprehensive strategy for jurisdictions to consider when designing their VAT policy and administration response to sharing/gig economy growth. The OECD's recent Sharing/Gig Economy Report provides further detailed analysis and guidance for the design and implementation of the components of this strategic VAT policy and administrative response to sharing/gig economy growth.

**Table 3C.1. Key components of a VAT strategy in response to sharing/gig economy growth**

| Step 1                    | <b>Acquire a good understanding of the size and growth of sharing/gig economy activity</b>  |
|---------------------------|---|
| Key Policy Considerations | <ul style="list-style-type: none"> <li>• To support evidence-based decision-making, jurisdictions need a proper and up-to-date understanding of the size and of the growth perspectives of the sharing/gig economy and its sectors at national level.</li> <li>• Jurisdictions can develop a framework for collecting statistical data on the sharing/gig economy activities. Imposing data reporting obligations on actors involved in the sharing/gig economy supply chain, notably the sharing/gig economy platforms, can allow jurisdictions to make quick progress in improving the measurement of the sharing/gig economy and therefore to acquire a better understanding of its size and growth.</li> <li>• Recognising that monitoring and measuring the sharing/gig economy obviously has a relevance beyond VAT policy, it is advisable that jurisdictions adopt a coordinated, whole-of-government approach in monitoring and measuring the sharing/gig economy to support a consistent, fact-based, effective and targeted policy strategy and implementation.</li> </ul>   |
| Step 2                    | <b>Assessing the VAT policy needs and opportunities and determining the objectives of VAT policy responses (addressing the “why” question)</b>  |
| Key Policy Considerations | <ul style="list-style-type: none"> <li>• A jurisdiction's policy priority may not necessarily be to impose VAT on all sharing/gig economy activities. It may for instance first wish to acquire an appropriate understanding of the sharing/gig economy development and monitor potential risks of VAT base erosion or opportunities to address informal activity in particular sectors of the economy.</li> <li>• A clear understanding of the objective(s) of VAT policy is critical for identifying the most appropriate policy response and for determining the design of this response. For example, if the objective is to purely monitor sharing/gig economy activity then the introduction of data reporting requirements on platforms is likely to be a core component of the policy response. The design of such a reporting requirement is, however, likely to be different when it would, for instance, be aimed at supporting VAT collection and compliance by pre-populating VAT returns of gig economy workers or to detect non-compliance and/or support compliance through risk analysis.</li> <li>• Jurisdictions may opt for a sequenced strategy, focusing their policy action first on the dominant sharing/gig economy sectors that may create the most immediate risks to VAT revenue and/or competitive neutrality, and the most significant opportunities for reducing informal economy activity, while continuing to monitor the other (emerging) sectors to ensure early identification of further needs and opportunities for policy action.</li> </ul> |

| Step 3                    | Determining and implementing the appropriate VAT policy and administration responses (the “how” question)  |
|---------------------------|--|
| Key Policy considerations | <ul style="list-style-type: none"> <li>• The preferred policy response is one that is consistent with the general rules and principles of the jurisdiction’s existing VAT system and limits the introduction of new exceptions or special regimes. This will ensure an equal treatment of various distribution channels in a given market, be they traditional or digital, notably as there is an emerging convergence of business models between the sharing/gig economy and the broader economy.</li> <li>• Tax authorities will often face the difficult trade-off between the need to protect revenue and minimise competitive distortion, and the need to safeguard the efficiency of tax administration and to avoid undue compliance burden. The latter may point to an approach that minimizes the entry of high numbers of new sharing/gig economy actors into the VAT system that may have limited compliance capacity and knowledge of their tax obligations. However, that approach may have significant adverse revenue and competitive consequences, when activity shifts from a limited number of established and largely VAT compliant traditional operators to a large number of small sharing/gig economy operators that may remain outside the scope of VAT (e.g. hotel activity vs. short-term vacation rentals). Bringing all these new sharing/gig economy operators into the VAT system may however create undue pressure for tax administrations, in jurisdictions with limited administrative capacity.</li> <li>• To achieve a balanced response to this challenge, jurisdictions can consider a number of possible non-mutually exclusive measures aimed at managing the number of new economic actors entering the VAT system, and at simplifying compliance obligations for sharing/gig economy providers. These include: setting an appropriate VAT registration and/or collection threshold; operating presumptive schemes (e.g. flat rate schemes) for determining the VAT liability of sharing/gig economy providers; accounting and reporting simplifications; split payment/withholding mechanisms for VAT collection; the use of technology to facilitate VAT administration and compliance; third-party reporting obligations; taxpayer education and other awareness raising activities. Detailed guidance on each of those policy responses is provided in Chapter 3, Section 2 of the Sharing/Gig Economy Report.</li> <li>• Jurisdictions are particularly advised to consider the significant opportunities created by the central role of digital platforms in the sharing/gig economy, to facilitate VAT administration and compliance. These platforms are well positioned to provide greater visibility and traceability of sharing/gig economy activity, thus providing significant opportunities for the formalisation of previously informal economic activity (see further discussion in 3C.3 below). Jurisdictions can consider in particular, <ul style="list-style-type: none"> <li>○ the implementation of data reporting obligations for sharing/gig economy platforms, based on the OECD Model Rules for Reporting by Platforms Operators with respect to Sellers in the Sharing/Gig Economy (OECD, 2020<sup>[54]</sup>) (see Annex C); and</li> <li>○ the introduction of a VAT collection obligation for sharing/gig economy platforms on the sharing/gig economy supplies that they facilitate.</li> </ul> <p>Sharing/gig economy platforms can further play an important role in educating sharing/gig economy providers on their VAT obligations and in assisting these operators in complying with their tax obligations. (See further detailed guidance under Chapter 3, Section 3 of the Sharing/Gig Economy Report).</p> </li> <li>• Compliance levels will be enhanced by ensuring early and proper communication of policy measures and providing adequate lead-time for their implementation along with clear guidance for all the sharing/gig economy actors involved. Jurisdictions are also encouraged to complement their VAT policy response to sharing/gig economy growth with targeted risk management strategies, including through the extensive use of third-party data to assist compliance monitoring</li> </ul> |

and data analysis; with measure to deter non-compliance; and international administrative co-operation as appropriate. Further detailed guidance on these aspects is provided in Chapter 4 of the Sharing/gig Economy Report and in Section 5 of this Toolkit.

- The sharing/gig economy is an evolving area. Developments including in the regulatory domain (e.g. labour-law related developments that could reshape the relations between the platforms and sharing/gig economy providers) and in the technological landscape will continue to influence the character, scope and scale of the sharing/gig economy at national, regional and global level. There is thus a need to continue monitoring developments and evaluating the efficiency of policies and the needs and/or opportunities for policy action.
- The design of policy responses needs to build on a good understanding of the sharing/gig economy actors, their ecosystems and trends to ensure their efficiency and effectiveness in practice. It is therefore important that tax administrations consult with the stakeholders involved, including the sharing/gig economy platforms, sharing/gig economy providers, traditional economic operators and other third-party stakeholders such as technology developers and accounting and tax compliance service providers.

Source: OECD analysis.

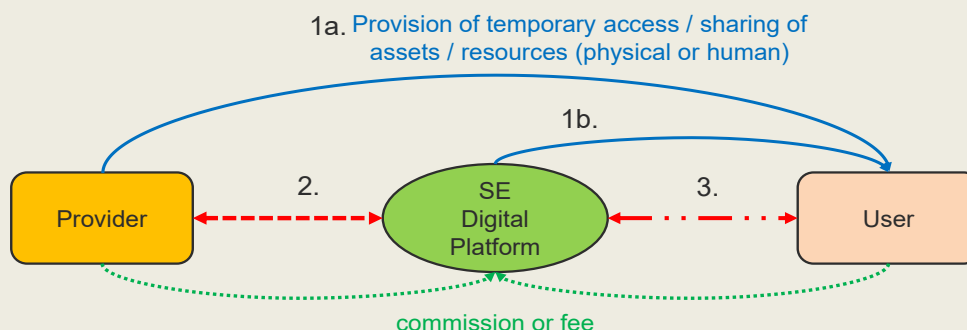
### 3C.3. Digital platforms can play a significant role in facilitating VAT compliance in the sharing/gig economy

Digital platforms play a central role in sharing/gig economy supply chains. A large diversity of business models can be observed among platforms, even within the same sharing/gig economy sector. These differences may include,

- The type of the services that are provided and/or facilitated (e.g., ride-sharing vs. ride-sourcing)
- The control that the platform exercises over the suppliers and users (e.g., in setting terms and conditions; safeguarding quality and safety, etc.)
- The VAT-relevant information that is collected by the platform (noting, however, that sharing/gig economy platforms generally collect considerable amounts of data on operators, customers and the activities that they facilitate)
- The payment flows and solutions (e.g. credit card and/or online payment, which is the default approach, vs. cash payments, which still exists in certain jurisdictions)

Further detailed analysis of the key sharing/gig economy business models, as operated particularly in the accommodation and transportation sectors, is provided in the Sharing/Gig Economy Report (see in Annex D of the Report). Box 3C.2 below provides a basic illustration of the role of a digital platform in a sharing/gig economy supply chain.

### Box 3C.2. A basic sharing and gig economy supply chain – Role of digital platforms



Possible interactions among the parties may include:

- 1a. Provision of temporary access/sharing of assets/resources (physical or human) by the provider to the user
- 1b. Provision of temporary access/sharing of assets/resources (physical or human) by the digital platform to the user
2. Interaction between the provider and the digital platform
3. Interaction between the digital platform and the user

Although there are many different sectors in which sharing/gig economy platforms operate, and their business models vary, a sharing/gig economy transaction will typically involve the following different group of actors/participants, which may not necessarily be located in the same jurisdiction:

- The provider (often a private individual) who shares assets, resources, time and/or skills in exchange for a consideration/fee (monetary).
- The user of these assets, resources, time and/or skills. Often the user is a private individual, although users with a business status cannot be excluded particularly in certain sectors (e.g. accommodation and/or on-demand services).
- The sharing/gig economy platform that connects sharing/gig economy providers with customers/users and enables the provision of sharing/gig economy services, directly or indirectly, to such users. Several terms may be used at national level to denominate these actors, including: “platforms”, “(online) marketplaces”, “electronic interfaces” or “intermediaries”.

With respect to the role of the digital platform in the supply chain, two main broad scenarios can be distinguished:

- Under scenario 1 (illustrated with arrow 1a on the diagram), the sharing/gig economy platform directly connects the provider(s) and the user(s) with respect to a sharing/gig economy supply. In return, the digital platform may receive a consideration/fee from either the provider or the user or both (**the “agent role”**).
- Under scenario 2 (illustrated with arrow 1b on the diagram), the platform first acquires the sharing/gig economy supply from the underlying sharing/gig economy provider and provides it in its own name to its user(s). Under this scenario, the platform is typically regarded by national legislation as the supplier of the service (**the “principal role”**). Often, these platforms contract with the individual underlying provider and they act as the contracting party to provide the service.

National labour law may have an impact on the determination of the exact role/status of the digital platform and the underlying providers for VAT purposes. This is particularly the case where the platform is considered to have a legal or *de facto* employment relationship with the (underlying) provider under national labour law. Under such circumstances, the platform may be considered as having provided the supply in its own name and on its own behalf (i.e. acting as principal) and the underlying provider may be considered as an employee.

Other actors can also be involved in the sharing/gig economy supply chain, with direct or indirect connection to the digital platform and/or the provider and/or the user. For example, in food (meal) delivery activities, different providers may be involved in the preparation of the meal and subsequently in the delivery of the meal to the customer. In the accommodation sector, an agent may directly interact with a platform with respect to the listing of apartments that may belong to different owners who are not necessarily known to the platform.

Note: the sequence of numbers assigned in the diagram is for identification only. It is not intended to indicate the timing of a specific step in chronological order.

Source: OECD (2021), *The Sharing/Gig Economy Report* (OECD, 2021<sup>[6]</sup>).

As highlighted above under Table 3C.1, policy measures to support an efficient and effective policy response to the VAT implications include potential roles for digital platforms facilitating sharing/gig economy supplies. These non-mutually exclusive potential roles include:

- Assuming a type of liability for the collection of the VAT on the sharing/gig economy supplies that they facilitate. Sharing/gig economy platforms that act as suppliers of the sharing/gig economy activity (under the “principal role” as illustrated in Box 3C.2 above) are in principle themselves subject to VAT obligations in respect of these activities in accordance with the jurisdiction’s normal VAT rules. Where sharing/gig economy platforms act as agents (“agent role” as illustrated in Box 3C.2 above), specific measures could be implemented to make these sharing/gig economy platforms liable for the VAT on the sharing/gig economy activities that they facilitate, for example by treating them as the “deemed suppliers” of these sharing/gig economy services. Further guidance on the operation of such a full VAT liability regime for digital platforms is provided in subsection 3A.4 of this Toolkit.
- Data reporting to the tax authorities. These data can be used by tax administrations to monitor sharing/gig economy activity, to facilitate compliance (e.g. by pre-filling VAT returns) and/or to minimise non-compliance by sharing/gig economy providers. The internationally agreed basis for the design of data reporting requirements for sharing/gig economy platforms is in the OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing/Gig Economy (see further in Annex C);
- Educating sharing/gig economy providers on their VAT obligations.

Subsection 3A.4 of this Toolkit provides guidance on the roles for digital platforms in the collection of VAT on online sales of services and digital products (such as streaming of music and movies, software application, etc.). This guidance is also relevant for sharing/gig economy activities. The sharing/gig economy however presents a number of specific features that may require further consideration when designing and implementing roles for digital platforms. Table 3C.2 below outlines the main similarities and specificities of the sharing/gig economy in comparison to the broader platform economy.

Table 3C.2. Sharing/gig economy vs. broader platform economy

| Similarities  | Specificities of the sharing/gig economy   |
|---|--|
| <ul style="list-style-type: none"> <li>• Digital platforms play a critical role in facilitating the supplies via the use of advanced technology.</li> <li>• The underlying supplies are not new but the means through which they are carried out are.</li> <li>• The platforms have a relation with both the underlying provider and the consumer. They are “multi-sided” platforms in that they enable the direct interaction between two or more customers or participant groups (typically users/customers and providers) whereby each group of participants (“side”) are customers of the multi-sided platform in some meaningful way.</li> <li>• Digital platforms have access to VAT relevant information in the course of their normal business activity.</li> <li>• Digital platforms generally do not have a physical presence in the jurisdiction of taxation.</li> <li>• An increasing number of jurisdictions have already enacted legislation involving digital platforms in the collection of VAT on online sales or are in the process of doing so.</li> </ul> | <ul style="list-style-type: none"> <li>• Sharing/gig economy suppliers may be individuals or small businesses that generate relatively small turnover from their sharing/gig economy activities.</li> <li>• Sharing/gig economy activity may often involve high volumes of low-value transactions (for instance in the transportation sector).</li> <li>• The underlying sharing/gig economy providers often have a (type of) presence in the jurisdiction of taxation and are less likely to provide their services in multiple jurisdictions.</li> <li>• The sharing/gig economy supplies often involve physical assets/capital of a certain value in the jurisdiction of taxation (e.g. a vehicle or an immovable property in the currently dominant sectors of transportation and accommodation).</li> <li>• The underlying sharing/gig economy providers often use assets for both their sharing/gig economy activities and for private purposes.</li> <li>• A wide(r) range of VAT policy objectives may be pursued by the tax authorities in respect of the sharing/gig economy than purely levying VAT on these activities (e.g. monitoring market evolutions).</li> </ul> |

A careful balancing of a number of considerations is required before implementing a VAT liability obligation for digital platforms in the sharing/gig economy. Sharing/gig economy platforms are often not located in the jurisdiction in which these sharing/gig activities are carried out. The sharing/gig economy providers, on the other hand, are often themselves located in the jurisdiction of taxation and may already be registered there for VAT purposes. This is different from the broader platform economy, particularly online sales of goods, services and digital products, which often involve online sellers that sell into markets without being located there. Where the sharing/gig economy platform is not located in the jurisdiction of taxation, the tax authorities may wish to carefully weigh the risks and benefits from shifting the VAT collection or liability for sharing/gig economy supplies from the individual sharing/gig economy providers that are resident in its jurisdiction onto a platform that is not resident in that jurisdiction.

Similarly, to minimize the administrative burden and compliance risks from input VAT deduction claims by sharing/gig economy providers operating via a digital platform, careful consideration could be given to complementing a full VAT liability regime with a simplification measure for the underlying providers such as a flat rate tax scheme or a VAT input tax credit scheme through the provider’s income tax return (see further guidance in Section 3.2.2. of the Sharing/Gig Economy Report).

Overall, recognising that there is no “one-size-fits-all solution”, taxing jurisdictions are encouraged to ensure an equal treatment of various distribution channels in a given market, be they traditional or digital. Jurisdictions are encouraged to take into account the overarching VAT policy design principles outlined under Section 3A when designing potential role(s) for digital platforms in enhancing VAT compliance and administration in the sharing and gig economy as well as implementing a number of supporting measures for the efficient and effective operation of these policy options as outlined in Section 5 of this Toolkit.

# 4

## Administrative and operational implementation of the OECD policy framework for the collection of VAT on international digital trade

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Section 4 of the VAT Digital Toolkit for Latin America and the Caribbean provides practical advice on the development of an administrative, operational, and IT infrastructure to support the recommended VAT policy framework. This includes concrete guidance on the implementation of a simplified registration and collection regime for VAT on online trade in services, intangibles, and low-value goods.

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## Guidance for readers

**Section 3 of this Toolkit provides readers with a detailed analysis of the OECD policy framework for VAT collection on international B2C supplies.** In particular, it focuses on the creation of laws that bring such supplies within the scope of VAT and impose VAT collection responsibilities on the non-resident suppliers that make them, whether for services, intangibles or low-value goods. It recommends that tax authorities make simplified VAT registration and collection regimes available to such suppliers. It also advises that, where appropriate, tax authorities impose collection responsibilities upon digital platforms for supplies that the platforms facilitate for non-resident suppliers.

**The purpose of Section 4 of the Toolkit is to provide jurisdictions with practical advice on the development of an administrative and operational infrastructure to implement this framework successfully.**

To aid navigation for readers and focus in depth on different key elements, the Toolkit organises Section 4 into four main parts:

- **Section 4A:** This Section focuses specifically on areas of administrative and operational implementation that are distinct to services and intangibles. It commences with a summary roadmap for implementation and thereafter analyses practical elements of administrative implementation that are distinctly applicable to services and intangibles.
- **Section 4B:** This Section focuses specifically on areas of administrative and operational implementation that are distinct to low-value goods. It commences with a summary roadmap for implementation and thereafter analyses practical elements of administrative implementation that are distinctly applicable to imports of low-value goods.
- **Section 4C:** Section 4C focuses on design and implementation of the main elements of administration for a simplified VAT registration and collection regime. The majority of the elements that comprise this administration can and should apply to all international B2C supplies. For efficiency, the Toolkit covers services, intangibles and low-value goods together in Section 4C.
- **Section 4D:** This Section focuses on design and implementation of the main elements of the operational and IT infrastructure for a simplified VAT registration and collection regime. Similarly, the majority of the elements that comprise this operational and IT infrastructure can and should apply to all international B2C supplies. For efficiency, the Toolkit covers services, intangibles and low-value goods together in Section 4D.

**Section 5** advises policymakers and administrators on the development of audit and risk management strategies under a simplified registration and collection regime.

## **Section 4A. Administrative and Operational Implementation for International Supplies of Services and Intangibles**

(In particular online sales of services and intangibles)

## Key messages

### Background and general overview:

The OECD policy framework for the application of VAT to digital trade sets out recommended approaches for jurisdictions to assert the right to impose VAT on online sales made by non-resident suppliers to customers in their jurisdiction. It presents recommended rules and mechanisms for imposing VAT collection obligations on non-resident suppliers making online supplies to final consumers in particular (B2C supplies). It advises jurisdictions to optimise levels of compliance by providing non-resident suppliers of B2C services and intangibles with a simplified VAT registration and collection regime to fulfil their obligations. These recommendations are set out in detail in Section 3 of this Toolkit, first with regard to online sales of services and intangibles and subsequently with regard to imports of low-value goods from online sales.

This Section 4A of the Toolkit provides guidance on the administrative and operational implementation of these recommendations, focusing in particular on the implementation of the OECD policy framework for international B2C supplies of services and intangibles. It provides guidance on project management and on key aspects of the administrative implementation of the recommended policy approaches that apply specifically to supplies of services and intangibles by non-resident suppliers.

Section 4B builds further on the guidance provided in 4A, focusing on the administrative and operational implementation of the recommended policy framework for the collection of VAT on imports of low-value goods. This reflects the recommendation for a sequenced implementation of the recommended policy framework for the collection of VAT on digital trade, focusing first on online sales of services and intangibles and subsequently on imports of low-value goods from online sales.

Section 4C provides guidance for the design of a simplified VAT registration and collection regime for non-resident suppliers, which applies both to supplies of services and intangibles and to the imports of low-value goods. Section 4D finally focuses on the central operational and IT infrastructure that supports these regimes.

### The core aspects covered in Section 4A and the associated guidance can be summarised as follows:

- **Project management:** The administrative and operational implementation of the recommended policy framework for the collection of VAT on online supplies of services and intangibles by non-resident suppliers requires sound project management. This includes the following aspects:
  - **Project plan:** Define the scope of a project plan to implement the recommended policy framework. This includes identifying deliverables, costs, and necessary implementation lead-time for tax authorities and businesses. A lead-time of 6-12 months between adoption of the reform and entry into force is considered appropriate for reform directed at online sales of services and intangibles.
  - **Project team:** Establish a project team with clear responsibilities to manage and deliver the IT infrastructure, the law and guidance, a communications strategy, a risk and compliance management strategy, etc.
  - **Transition from existing approaches:** Consider how any existing approaches, such as financial intermediary VAT withholding regimes, will affect and inform the transition to a simplified registration and collection regime.
  - **Conformity with other relevant national laws:** Jurisdictions should carefully check to ensure that the policy and administrative design of their VAT reform directed at online sales of services and intangibles conforms to other relevant national laws before proceeding with implementation. These includes rules regarding security, use of electronic communications, taxpayer privacy and confidentiality.

- **Anticipating possible extension to imports of low-value goods:** Jurisdictions are advised to ensure the adaptability and scalability of their regime directed at online supplies of services and intangibles for use in VAT collection on a wider range of activities, including the importation of low-value goods.
- **Treatment of international B2B supplies by non-resident suppliers:** Where jurisdictions' VAT framework distinguishes between B2B and B2C supplies, the OECD guidance recommends a reverse charge as the principal mechanism for the collection of VAT on B2B supplies of services and intangibles by a non-resident supplier. Jurisdictions whose VAT framework does not differentiate between B2C and B2B supplies may consider allowing the use of the simplified registration and collection regime for both categories of supplies.
- **Implementation of a reverse charge for international B2B supplies:** Jurisdictions that implement a reverse charge mechanism for B2B supplies of services and intangibles by non-resident suppliers should consider a number of elements relating to its administration and operation. These include timely and clear rules on the scope of the reverse charge, on the determination of the status of the customer, the potential implementation of tools to validate a business customer's VAT registration number, exceptions to the reverse charge, and measures to address possible abuse.
- **Categories of services and intangibles in scope of a simplified compliance regime for international B2C supplies:** When defining the scope of such a regime jurisdictions could take a "broad" or a "targeted" approach. A broad approach would cover all supplies of services and intangibles that non-resident suppliers make remotely to final consumers in a jurisdiction. A targeted approach restricts VAT collection obligations on non-resident suppliers to specified supplies of services and intangibles, typically those that policymakers would identify as digital services and digital products. The international trend favours the broad approach.
- **Identification of non-resident suppliers obliged to register for VAT:** As part of the administrative and operational implementation process, as well as audit and risk management strategies, jurisdictions will have to identify non-resident suppliers that are obliged to register under a regime that imposes collection obligations on these suppliers' sales to consumers in the jurisdiction. Possible sources of information could include data from a jurisdiction's "Financial Intelligence Unit" or similar department, registration lists of jurisdictions that have already implemented simplified compliance regimes or lists available from commercial data analysts such as "web-scraping" entities. The largest non-resident suppliers and digital platforms ought to be a priority.
- **Standard VAT registration as an alternative compliance option for non-resident suppliers:** Jurisdictions may wish to evaluate the operation of their standard VAT registration procedures with a view to making them accessible as an alternative possibility for non-resident suppliers.

**Note on Section 6 Checklists:** Readers will find a comprehensive set of checklists at Section 6 of the Toolkit. The purpose of these checklists is to support the design and implementation of an effective strategy for the collection of VAT on international B2C trade. The checklists do this by distilling and mapping out the main messages from all of the key areas that the Toolkit covers: policy, legislation, administration, operational and IT infrastructure, as well as audit and risk management strategies. This includes coverage of the subjects that Section 4A addresses in depth.

## Guide to Section 4A

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### 4A.1. Roadmap for successful administrative and operational implementation

#### Guide to subsection 4A.1.

| Section | Theme   | Page |
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| 4A.1.1. | <i>Introduction to the implementation of the recommended policy framework for the collection of VAT on international supplies of services and intangibles</i> | 139  |
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#### **4A.1.1. Introduction to the implementation of the recommended policy framework for the collection of VAT on international supplies of services and intangibles**

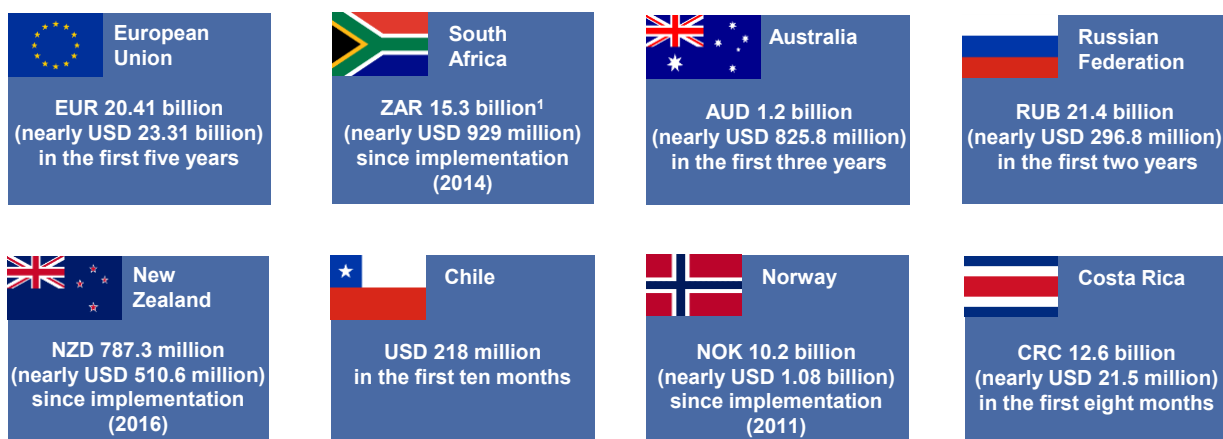
Implementing a simplified registration and collection regime is the OECD's recommended approach to the collection of VAT from non-resident suppliers making international B2C supplies of services and intangibles. A high proportion of these supplies in the context of the modern digital economy includes what public policymakers commonly refer to as "digital services" and "digital products".

This Toolkit delineates the policy framework for services and intangibles in detail in Section 3A. In particular, it focuses on the design of the policy and overarching administrative framework of simplified registration and collection regimes (“simplified compliance regimes” for short) at subsection 3A.3. The purpose of Section 4 of the Toolkit is to provide jurisdictions with practical advice on the development of an administrative and operational infrastructure to implement this framework successfully. Section 4 provides guidance regarding the implementation of the OECD framework for international supplies of services and intangibles as well as for international supplies of goods. Within this broader context, Section 4A focuses specifically on implementation issues for services and intangibles. It commences with a summary roadmap for implementation and thereafter analyses practical elements of administrative implementation that are distinctly applicable to services and intangibles.

In allocating their internal resources to outreach, communications and compliance, tax administrations may wish to consider the largest non-resident businesses making international B2C supplies of services and intangibles as their top priority because the supplies of these businesses will generate the majority of new VAT revenues. To achieve the ultimate objective of effective collection of VAT revenues, jurisdictions should seek to make compliance with their tax law as simple as possible and, with this goal in mind, to minimise administrative burdens. Businesses operating across multiple jurisdictions can comply much more effectively with these jurisdictions’ respective regimes for taxing international supplies of services and intangibles when these regimes are consistent across jurisdictions. This can be achieved by aligning these regimes with the internationally agreed policy framework based on OECD guidance. Such alignment increases VAT revenues to the benefit of governments and reduces compliance costs for businesses. It is also essential that compliance costs for businesses be minimised, as appropriate, especially for small and medium-sized businesses for which the relative impact of compliance costs may be particularly acute. Simplified compliance regimes should also seek to maintain neutrality between domestic and foreign suppliers.

Consistent approaches, including simple to use registration, returns and payment mechanisms, have been shown to be very effective. At the time of writing of this Toolkit, over 70 jurisdictions worldwide had already implemented the OECD standards and guidance for VAT on international B2C supplies of services and intangibles. The implementation of these standards is yielding impressive results, as illustrated by Figure 4A.1 below.

**Figure 4A.1. Overview of revenue results**



1. South Africa expanded its regime for VAT collection by non-resident suppliers on international supplies of services and intangibles in 2019 to include B2B transactions. This number thus include certain B2B transactions on which the customer would have been able to reclaim the VAT as input tax.

Source: OECD research.

**Business-to-business (B2B) supplies.** Section 3A of this Toolkit sets out OECD recommendations on the optimal VAT treatment of international B2B supplies of services and intangibles. Please see in particular subsections 3A.2.7 and 3A.3.3. In short, the Guidelines<sup>38</sup> recommend that the place-of-taxation rules for B2B supplies should focus not only on where the business customer will use its purchases to create the supplies that final consumers will acquire, but also on facilitating the flow-through of the tax burden to the final consumer while maintaining neutrality within the VAT system.

In practice, this means that jurisdictions are advised to implement rules for international B2B supplies of services and intangibles that avoid the charging of VAT by non-resident suppliers to domestic business customers. To achieve this objective, jurisdictions may either release both the non-resident supplier and domestic business customer from the obligation of recording the transaction for VAT purposes or they can adopt a reverse charge mechanism. Under a reverse charge mechanism, the domestic business customer accounts for the VAT on its purchases from non-resident suppliers by reporting both the non-resident supplier's output VAT on the supply and, if applicable, its own right to recover input VAT from purchasing the supply. The domestic business customer will record this output and input information on the same return. Thus, the transaction is neutral for the customer from a VAT perspective and relieves it of the cash-flow burden of transferring funds to the non-resident supplier for the VAT due on the supply.

In the LAC region, most jurisdictions that apply VAT to international services and intangibles make a type of reverse charge mechanism available to business customers, as analysed in more detail in Table 4A.2 of this Section. In summary, only Barbados, Dominican Republic, Honduras, Paraguay and Saint Lucia do not (appear to) have any form of reverse charge mechanism in their VAT law. Of course, this may reflect the fact that in some jurisdictions the VAT framework does not distinguish between B2C and B2B supplies. Section 4 of the Toolkit includes guidance to tax policymakers and administrators on the possible implementation of a reverse charge mechanism in jurisdictions that wish to do so, notably at subsection 4A.2.2.

**Digital platforms and intermediaries.** As Section 3A explains, digital platforms and other intermediaries can significantly enhance the efficiency of VAT collection on international digital trade. See the passages on “Intermediaries and Agents” at subsection 3A.3.5.(v), and all of subsection 3A.4. The design of a simplified compliance regime should facilitate the full participation of platforms and intermediaries. Digital platforms in particular often face a very large number of multi-jurisdictional obligations compared to other international businesses.

#### **4A.1.2. Summary implementation roadmap and key issues to consider**

##### **Box 4A.1. Overview of main recommendations**

- Define the scope of a project plan to implement the recommended policy framework for VAT collection on international B2C supplies of services and intangibles.
  - Identify deliverables, approximate costs and establish an appropriate implementation lead-time for tax authorities and businesses to implement changes to systems and supporting frameworks.
  - A lead-time of 6-12 months between adoption of the reform and entry into force is considered appropriate for VAT reform directed at online sales of services and intangibles. A lead-time of 12-18 months is generally considered appropriate for VAT reform targeted at imports of low-value goods. Close alignment with the recommended OECD framework can considerably shorten these lead times, as online businesses and tax

<sup>38</sup> See Guideline 3.2 of the Guidelines. Readers can find this at “Chapter 3: Determining the place of taxation for cross-border supplies of services and intangibles”, pages 38 to 42 in particular.

authorities can leverage solutions and technology that has already been implemented in jurisdictions that have adopted a similar approach.

- Establish a project team with clear responsibilities to manage and deliver:
  - The design, building and testing of a simplified registration, reporting and payment portal
  - The development of law and guidance
  - The development and delivery of an effective communications strategy
  - An effective risk and compliance management strategy; and
  - Changes required to existing processes
- Consider how any existing approaches, such as financial intermediary VAT withholding, will affect and inform the transition to a simplified registration and collection regime.

### *(i) Adhering to principles of good tax policymaking and administration*

The *Ottawa Taxation Framework Conditions* (OECD, 2001<sup>[55]</sup>) provide the overarching set of principles that govern how jurisdictions should design regimes for the taxation of international trade and, within that framework, especially digital trade. These principles should be at the forefront of tax policymakers' and administrators' minds when embarking upon a programme of reform to implement the recommended policy framework for VAT collection on international digital trade.

#### **Box 4A.2. The Ottawa Taxation Framework Conditions – Principles**

##### **Neutrality**

Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.

##### **Efficiency**

Compliance costs for taxpayers and administrative costs for the tax authorities should be minimised as far as possible.

##### **Certainty and simplicity**

The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted.

##### **Effectiveness and fairness**

Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimised while keeping counter-acting measures proportionate to the risks involved.

##### **Flexibility**

The systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.

Source: OECD (2001), *Taxation and Electronic Commerce: Implementing the Ottawa Taxation Framework Conditions* (OECD, 2001<sup>[55]</sup>).

In addition, the Forum on Tax Administration approved the following General Administrative Principles in 2001. This guidance will help when implementing the recommended policy framework for VAT on international digital trade at an administrative and operational level, notably in engaging with businesses.

### Box 4A.3. Relations with Taxpayers

Revenue authorities are encouraged to:

- Apply tax laws in a fair, reliable and transparent manner
- Outline and communicate to taxpayers their rights and obligations as well as the available complaint procedures and redress mechanisms
- Consistently deliver quality information and treat inquiries, requests and appeals from taxpayers in an accurate and timely fashion
- Provide an accessible and dependable information service on taxpayers' rights and obligations with respect to the law
- Ensure that compliance costs are kept at the minimum level necessary to achieve compliance with the tax laws
- Where appropriate, give taxpayers opportunities to comment on changes to administrative policies and procedures
- Use taxpayer information only to the extent permitted by law
- Develop and maintain good working relationships with client groups and the wider community

Source: OECD (2001), *General Administrative Principles* (OECD, 2001<sup>[56]</sup>).

#### *(ii) Critical decisions and actions during the policy design phase*

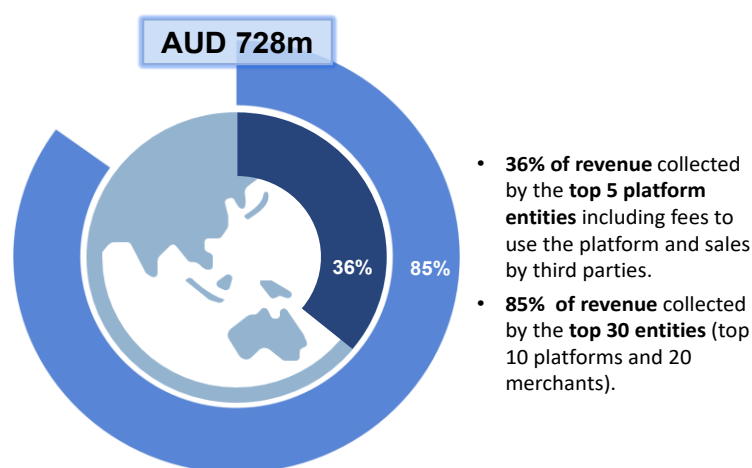
Tax policymakers and administrators will make many key decisions at the policy design stage, which will affect the effectiveness and efficiency of simplified compliance regimes. Section 3A identified the main elements at subsection 3A.3.4. The policy and legislative checklist at Section 6 also outlines these elements of policy design that affect the overall effectiveness of administration and operational infrastructure. For the benefit of readers focusing primarily on the building of administrative and operational infrastructure, this subsection provides a brief summary of key items. All relevant parties to the development of simplified compliance regimes should collaborate from the outset in working through key decisions affecting the scope and design of a jurisdiction's regime. This includes both Ministries of Finance and tax authorities. The process of collaboration should also address the investment and running costs for tax authorities.

Key decisions affecting the scope and design of simplified compliance regimes include:

- Scope of supplies and of customer statuses
- Determining customer status
- Whether, when and how to adopt a reverse charge mechanism for domestic business customers
- Indicia and evidence for determining the place of taxation
- Scope of economic activities – Categories of supply in scope
- Registration thresholds
- Permitting or denying access to input credits
- The role of the traditional registration regime
- The role of digital platforms
- The role of tax agents and fiscal representatives
- Any transitional arrangements that apply to existing policies, which the new policy framework will supersede

**Building relationships with taxpayers at an early stage.** Jurisdictions are strongly advised to seek to identify and engage with key non-resident suppliers during the policy design phase. This will improve the effectiveness of administering the system for tax authorities from the moment the law comes into force. By way of illustration, Australia conducted an analysis of the AUD 728 million it collected in the first two years of its regime for services and intangibles from 1 July 2017 to 30 June 2019. Australia found that 36% of VAT revenue under the regime was collected by the top 5 digital platform entities. In addition, 85% of revenue was collected by the top 30 entities (top 10 platforms and 20 merchants).

**Figure 4A.2. Australia – GST collected on digital products and services (from 1 July 2017 to 30 June 2019)**



Source: Australian Taxation Office.

**Prioritising simplicity and focus on net revenues.** Jurisdictions are encouraged to aim at maximising the amount of VAT revenue collected *net* of total administration and compliance costs. Therefore, jurisdictions are advised to keep simplified compliance regimes for international supplies of services and intangibles as simple as possible. They are advised to minimise bespoke design features and ensure that such features do not create compliance difficulties for suppliers. Policy decisions relating to registration thresholds, the role of digital platforms and the treatment of B2B supplies can cumulatively help to reduce overall compliance costs and optimise the administration of the regime. These decisions will limit the numbers of registrants in the system in a manner that relieves burdens for those businesses likely to contribute little or no net revenues.

**Funding simplified compliance regimes.** Jurisdictions must also consider internal funding of the reform to implement and operate the simplified compliance regime. This would include an assessment of the implementation requirements for tax administration. These requirements include: the design and adoption of new information technology solutions, communication with affected non-resident businesses, the design and delivery of technical guidance and advice, risk management and compliance strategies and, where required, the cost of integration with the tax authorities' existing IT systems and changes to supporting processes and administrative frameworks.

**IT and operational infrastructure.** Critically, an assessment of information technology requirements to deliver a simplified compliance regime is required at a very early stage in order to identify:

- Whether an entirely new system, modification to existing systems, or outsourcing is the best approach for delivering a functional registration, reporting and payment system for non-resident suppliers
- The timeframe required to design, test and deploy necessary changes, noting that this will determine when laws can come into force mandating obligations for non-resident suppliers under a simplified compliance regime
- The funding required to undertake necessary information technology changes

**Monitoring and enforcing compliance.** In addition, at the policy design phase jurisdictions may need to assess whether they have appropriate powers to monitor and manage the compliance of non-resident suppliers. In many cases, jurisdictions can utilise the same or a similar range of penalty provisions and anti-abuse powers as those they direct at domestic suppliers. Regarding consumers, there is little evidence of consumer-initiated fraud in practice, as their purchases are generally at relatively low value. However, jurisdictions may still consider whether provisions are required to appropriately manage situations where consumers may misrepresent themselves as VAT-registered domestic businesses in order to avoid paying VAT. Please refer to subsection 5.6 of this Toolkit for more detail.

### *(iii) Understanding businesses' needs*

At the policy development phase, tax policymakers and administrators should closely consult wherever possible with affected businesses and seek their input. The Business at OECD advisory group and several other industry representative bodies can offer candid advice and guidance. These industry bodies include both international and national organisations, such as a particular country's domestic chambers of commerce or business federations. This advice and guidance will bring improvements to the design of policies, laws and administration by identifying key opportunities and constraints.

Early engagement with businesses will make subsequent rounds of consultation much smoother through nurturing partnerships. Business consultation has proven to be helpful in fine-tuning design elements of the simplified compliance regimes to improve the compliance process where appropriate. These adjustments have encompassed adjustments to registration, reporting and payment systems taking account of national VAT design and circumstances. Businesses can provide support to the development of technical guidance materials and subordinate legal instruments that indicate how the tax authority plans to administer the regime in practice. Tax authorities are advised to make all or at the least the essential parts of this material accessible to non-resident suppliers in one or more languages that are employed on a global basis.

It is also important to recognise and take account of the time that businesses require to update their systems and internal processes to deal with new VAT collection obligations. In the case of digital platforms, this issue also includes the processes the platforms must put in place with underlying non-resident suppliers in order to take responsibility for VAT on the latter's supplies. The majority of large international businesses can be expected to engage with jurisdictions to ensure compliance with reforms for the collection of VAT on international digital trade. However, businesses' own governance procedures, funding and resource constraints may place limitations on how rapidly they can begin complying as a practical matter.

The general announcement of new obligations as such often will not provide sufficient certainty for businesses to determine whether to invest in compliance system changes. Jurisdictions may sometimes substantially amend policies and the design of administrative procedures during the design phase, which may have a significant impact on businesses' compliance systems design. Most businesses will therefore wait until the formal and final adoption of the new regime and the associated compliance obligations before authorising investments in major systems changes to comply with the new rules. Jurisdictions must therefore provide appropriate lead-time between the date new measures are enacted into law and the date they come into force. This is critical to securing a high level of compliance from the start, and it should

reflect an appropriate timeframe for tax authorities to communicate and consult with non-resident businesses about these changes. A related factor that is critical to ensuring businesses' appropriate preparation for the implementation of changes is thus the establishment of clear channels of communication by the tax authorities. A lead-time of 6-12 months between adoption of the reform and entry into force is considered appropriate for VAT reform directed at online sales of services and intangibles. A lead-time of 12-18 months is generally considered appropriate for VAT reform targeted at imports of low-value goods. Close alignment with the recommended OECD framework can considerably shorten these lead times, as online businesses and tax authorities can leverage solutions and technology that has already been implemented in jurisdictions that have adopted a similar approach.

Some jurisdictions already have adopted VAT laws applicable to international B2C supplies of services and intangibles, including supplies made by non-resident suppliers, but without a simplified compliance regime. In subsequently seeking to build a simplified compliance regime to facilitate higher compliance levels, jurisdictions are still advised to recognise the importance of an appropriate transition period that suppliers will need to make internal systems changes and coordinate with other key actors such as digital platforms.

#### *(iv) Project management*

**Establishing a project management structure.** When jurisdictions determine to assert their taxing rights to VAT on international B2C supplies of services and intangibles, tax authorities<sup>39</sup> should establish a project management structure to oversee development of a simplified compliance regime for non-resident suppliers. Such a structure should clearly establish a governance framework, project scope and a project lead as early as possible. The project lead must be able to call on a team with direct responsibility for managing the project's implementation. The project team may include representatives of other government agencies. Establishing the project management structure and approach should preferably commence during the policy development phase, prior to the passage of new laws. The project lead must be responsible for reporting on implementation issues to the tax authorities' senior officers as well as to a wider group of government officials.

The creation of a detailed project plan should include the design and delivery of the following strategies:

- **Policy, laws and taxpayer guidance:** This envisions a policy framework and laws that make non-resident suppliers liable for the VAT on B2C supplies of services and intangibles to consumers that have their usual residence in the jurisdiction. The framework should include a simplified compliance regime and a full VAT liability regime for digital platforms. Laws and supporting regulations should clearly set out the registration process and compliance requirements. The framework should also clarify the appropriate treatment of B2B supplies and the corresponding registration process and compliance requirements, in case the jurisdiction's VAT framework distinguishes between B2C and B2B supplies. Further elements include Internet-based guidance on the operation of the regime, concessions relating to the application of penalties at the outset of new measures' entry into force, and processes to manage technical enquiries and the management of disputes.
- **Simplified registration, reporting and payment portal:** This means the development of a separate business case for the development of the digital portal, detailed technical design plans, development costs, and construction, testing and deployment schedules.
- **Communications strategy:** This contemplates effective strategies and material to communicate with non-resident businesses, including platforms, intermediaries and other stakeholders such as consumers and domestic businesses. It also includes help channels and statements of compliance expectations (see also 4C.4).

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<sup>39</sup> The use of the term "tax authorities" in this regard also recognises that in some jurisdictions there may be key leadership roles for Ministries of Finance throughout the implementation of new tax policy projects.

- **Risk and compliance:** This embraces analysis and modelling to identify businesses potentially in scope of the law, treatment strategies, processes to address non-compliance through audits and other actions (see also Section 5), and communication of these procedures so that non-resident suppliers understand the consequences of non-compliance.
- **Changes required to existing processes:** These include plans to update and change existing administrative processes and systems relating to account management including penalties, return filing, debt and other procedures.

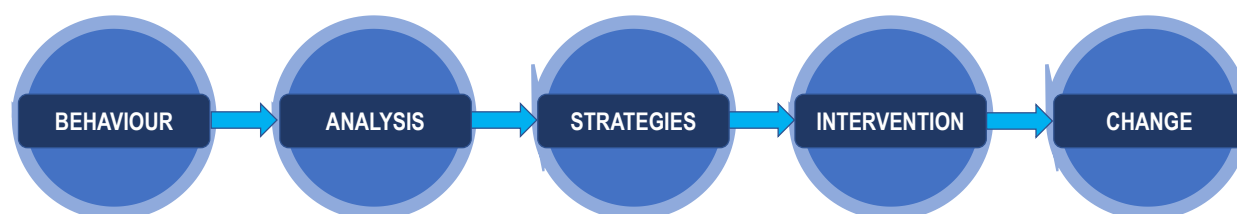
Figure 4A.4 at the end of this subsection provides an indicative high-level project implementation timeline for all stakeholders, and it reveals how the project elements described above can be concurrently implemented.

**IT systems changes and development.** Tax authorities may already have established protocols and project management methodologies to govern the implementation of new tax measures and related information technology systems changes. However, the process of developing a simplified compliance regime for non-resident suppliers may present new challenges given the international nature of such regimes, particularly, with respect to the creation of a new digital portal. For jurisdictions seeking additional guidance regarding project management of digital developments, the OECD Digital Government Toolkit website<sup>40</sup> outlines key principles and best practice examples to support the development and implementation of digital government strategies. The Observatory of Public Sector Innovation website<sup>41</sup> similarly provides useful guidance on a wider range of subjects in the fields of public sector innovation and transformation, including “Digital and Technology Transformation”.

**Risk management and compliance strategies.** In designing project plans and strategies, tax policymakers can also draw on the application of behavioural insights (BI) approaches to inform their development of communication and risk strategies. Tax policymakers are advised to consider applying targeted concessions to encourage compliance; for example, waiving penalties in the first year of the simplified compliance regime where businesses have made a genuine attempt to comply. They may also consider providing for transitional rules and ways to assist registered business to become compliant if no, or no appropriate, lead-time could be granted, e.g. due to political reasons.

The OECD has provided guidance on using BI for breaking down a policy issue into its behavioural components and identifying potential behavioural barriers that can undermine the intended policy outcome as well as potential behavioural enablers that can ultimately enhance the effectiveness of the policy (OECD, 2019<sup>[57]</sup>). The OECD guidance uses a process that guides the policymaker through Behaviours, Analysis, Strategies, Interventions and Change (abbreviated “BASIC”). BASIC is a toolkit that equips the policymaker with best practice tools, methods and ethical guidelines for conducting BI projects from the beginning to the end of a public policymaking cycle.

Figure 4A.3. The ‘BASIC’ pathway



Source: OECD (2019), *Tools and Ethics for Applied Behavioural Insights: The BASIC Toolkit* (OECD, 2019<sup>[57]</sup>).

<sup>40</sup> See further the website available at <https://www.oecd.org/governance/digital-government/toolkit/>.

<sup>41</sup> See further the website available at <https://oecd-opsi.org/toolkit-navigator/>.

The two primary drivers of risk in the behaviour of non-resident suppliers of services and intangibles are described in the table below namely, ignorance and deliberate disengagement.

**Table 4A.1. Summary risk assessment of non-resident suppliers based on behavioural insights**

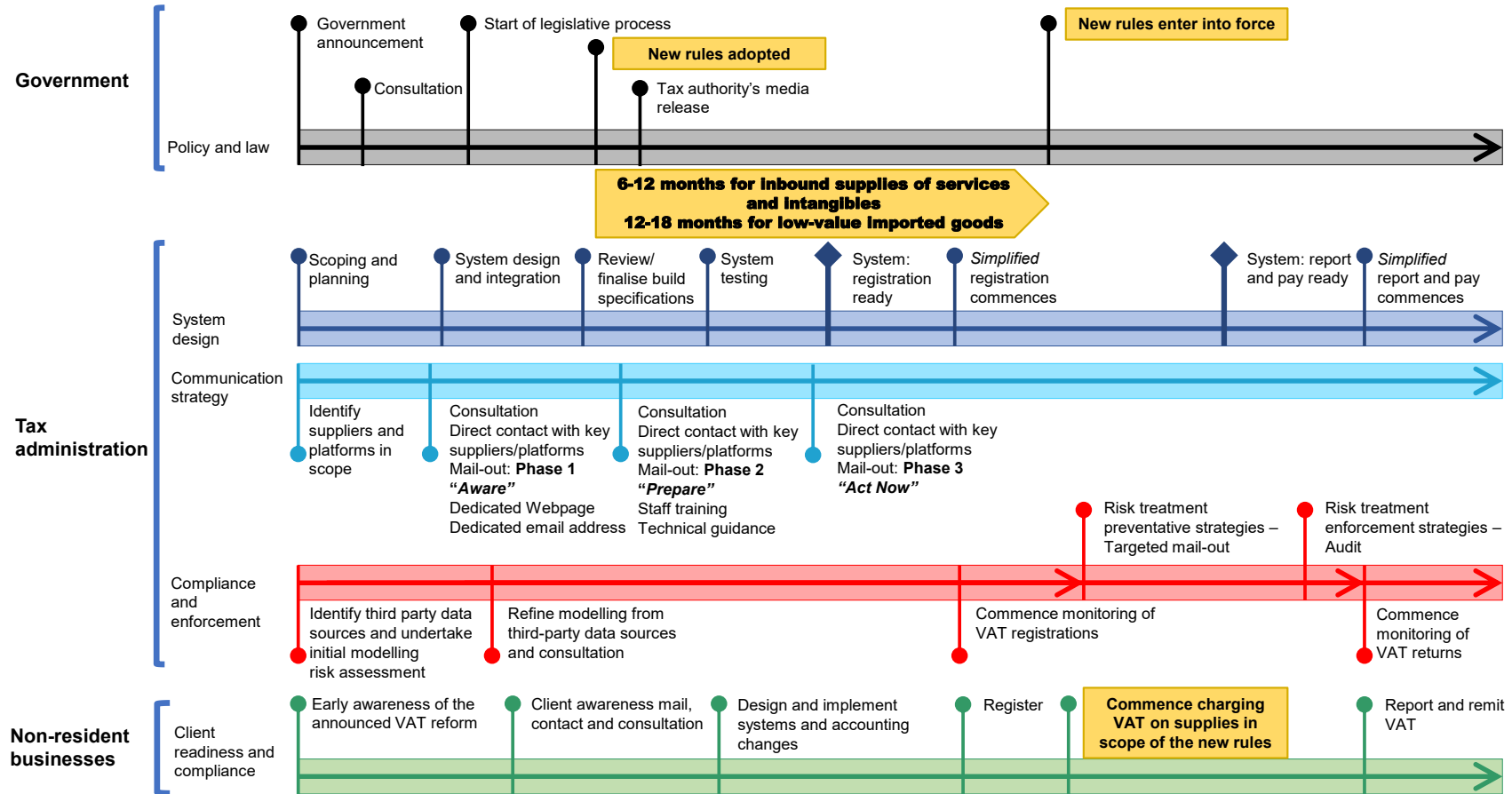
| Behaviour  | Strategy to address risk  |
|--|---|
| <b><i>Ignorance</i></b>  |   |
| Offshore suppliers may genuinely lack awareness of their obligations outside of their domiciled jurisdiction.  | <p style="text-align: center;"><b>Assist non-resident suppliers to willingly comply.</b></p> <p>See Communications Strategy in subsection 4C.4 under Section 4C of this Toolkit.</p>  |
| Confusion over how the law impacts them.   |   |
| Poor client experience for suppliers resulting from challenges in the functioning of the tax authority's operational systems. These make it very difficult to access and use the simplified registration, returns and payment processes. |   |
| Scam apprehension – The entity may not believe the tax authority's engagement as legitimate and, in fact, view it as a scam.   |   |
| <b><i>Deliberate Disengagement</i><sup>1</sup></b>   |   |
| Cost of compliance leading to an unwillingness or inability to make the necessary investment in business systems to comply with the law.   | <p style="text-align: center;"><b>Take available compliance actions to respond to deliberate non-compliance, developing new measures where appropriate.</b></p> <p>See Section 5 – Audit and Risk Management of this Toolkit.</p> |
| Desire to obtain a commercial pricing advantage through evasion of VAT.  |   |
| Belief that foreign tax authorities will not be able to effectively enforce compliance.  |   |
| Supplier's belief that a foreign jurisdiction has no legal right to impose an obligation on it to collect VAT.   |   |
| Adoption of a 'wait and see' position – Only engage if contacted by the tax authority.   |   |

1. Disengagement may also arise in the historically *compliant* population if it believes that non-compliant competitors are not receiving appropriate attention in the enforcement actions that the tax authority undertakes.  
Source: OECD analysis.

Section 5 of this Toolkit provides further detailed discussion of risk management and compliance strategies.

**Ongoing evaluation of the project plan and results of implementation:** The project team should also develop processes to measure and evaluate the effectiveness of its plan and update policymakers as required. This may comprise (but is not necessarily limited to) an assessment of the effectiveness of communications and legal guidance, as well as the number of registrants and revenue outcomes. A public statement on the performance of the regime at the appropriate time may also provide assurance to compliant non-resident suppliers that the law is achieving the intended outcomes because they will presumably be concerned that their competitors are complying with the law. Domestic businesses and consumers also will likely have an interest in the effectiveness of the reform.

Figure 4A.4. Indicative project implementation timeline



Source: OECD analysis.

### 4A.1.3. Overview and comparative analysis of VAT frameworks in the LAC region

Jurisdictions around the world, including in the LAC region, have implemented regimes for the collection of VAT on international B2C supplies of services and intangibles in line with OECD guidance. These regimes can vary in their operation and scope but broadly follow the principle of simplified registration and collection. The OECD's Consumption Tax Trends 2020 reports on the features, similarities and differences of regimes for international supplies of services and intangibles in OECD member countries, including simplified compliance regimes (OECD, 2020<sup>[58]</sup>). Subsection 4A.1.2 above recalled the key decisions on policy and administrative design that jurisdictions must make in building simplified compliance regimes.

Many jurisdictions in the LAC region currently do not operate regimes that align closely to OECD guidance for the collection of VAT on international supplies of services and intangibles. There are several differences in practices that currently characterise the VAT frameworks of the region.

The following table presents an overview and comparative analysis of the relevant key features of the VAT frameworks of jurisdictions in the LAC region.

**Table 4A.2. Overview of VAT frameworks in the LAC region**

| Jurisdiction                               | VAT <sup>1</sup>                    | Taxation of international services and intangibles <sup>2</sup> | For jurisdictions that apply VAT to international supplies of services and intangibles |  |   |   |   |                                     |
|--|-------------------------------------|---|--|--|---|---|---|-------------------------------------|
|  |                                     |   | Non-resident supplier registration   |  |   | VAT registration threshold <sup>6</sup> | Financial intermediary withholding <sup>7</sup> | B2B reverse charge <sup>8</sup>     |
|  |                                     |   | Simplified registration <sup>3</sup>   | Mandatory standard registration <sup>4</sup> | Optional standard registration <sup>5</sup> |   |   |                                     |
| Anguilla                                   | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Antigua & Barbuda                          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Argentina                                  | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Aruba                                      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Bahamas                                    | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Barbados                                   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Bermuda                                    | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Bolivia                                    | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Bonaire, St. Eustatius & Saba <sup>9</sup> | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Brazil <sup>10</sup>                       | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Cayman Islands                             | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Chile <sup>11</sup>                        | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Colombia <sup>12</sup>                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |

| Jurisdiction                     | VAT <sup>1</sup>                    | Taxation of international services and intangibles <sup>2</sup> | For jurisdictions that apply VAT to international supplies of services and intangibles |  |   |   |   |                                     |
|----------------------------------|-------------------------------------|---|--|--|---|---|---|-------------------------------------|
|                                  |                                     |   | Non-resident supplier registration   |  |   | VAT registration threshold <sup>6</sup> | Financial intermediary withholding <sup>7</sup> | B2B reverse charge <sup>8</sup>     |
|                                  |                                     |   | Simplified registration <sup>3</sup>   | Mandatory standard registration <sup>4</sup> | Optional standard registration <sup>5</sup> |   |   |                                     |
| Costa Rica <sup>13</sup>         | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Cuba                             | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Curaçao <sup>14</sup>            | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Dominican Republic <sup>15</sup> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Ecuador <sup>16</sup>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| El Salvador                      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Grenada                          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Guatemala                        | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Guinea                           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Guyana                           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Haiti                            | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Honduras                         | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Jamaica                          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Mexico                           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Montserrat                       | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Nicaragua                        | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Panama                           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Paraguay <sup>17</sup>           | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| Peru                             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| St. Kitts and Nevis              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| St. Lucia                        | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |
| St. Maarten                      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| St. Vincent                      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |

| Jurisdiction             | VAT <sup>1</sup>                    | Taxation of international services and intangibles <sup>2</sup> | For jurisdictions that apply VAT to international supplies of services and intangibles |  |   |   |   |                                     |
|--------------------------|-------------------------------------|---|--|--|---|---|---|-------------------------------------|
|                          |                                     |   | Non-resident supplier registration   |  |   | VAT registration threshold <sup>6</sup> | Financial intermediary withholding <sup>7</sup> | B2B reverse charge <sup>8</sup>     |
|                          |                                     |   | Simplified registration <sup>3</sup>   | Mandatory standard registration <sup>4</sup> | Optional standard registration <sup>5</sup> |   |   |                                     |
| Suriname                 | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Trinidad and Tobago      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | -  | -  | -   | -                                       | -   | -                                   |
| Turks and Caicos Islands | <input checked="" type="checkbox"/> | -   | -  | -  | -   | -                                       | -   | -                                   |
| Uruguay                  | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                             | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/>     | <input checked="" type="checkbox"/>             | <input checked="" type="checkbox"/> |

1. The jurisdiction has implemented a VAT i.e. any national tax that embodies the basic features of a value added tax as described in Chapter 1 of the *International VAT/GST Guidelines*, by whatever abbreviation it is known 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).

2. Refers to any regime or measure for the application of VAT to inbound supplies of services and intangibles by a non-resident supplier as described in Section 3A.3.1.

3. The simplified registration regime refers to a simplified VAT registration and collection regime for non-resident suppliers that seeks the collection and remittance of VAT on inbound supplies of services and intangibles from these suppliers as described in Section 3A.3.4 of this Toolkit.

4. Under the mandatory standard registration regime, non-resident suppliers are committed to register under the same standard VAT registration regime as domestic suppliers. No simplification is available to non-resident suppliers with respect to the registration procedure and requirements.

5. Under the optional standard registration regime, standard VAT registration is available to non-resident suppliers in respect of B2C supplies of services and intangibles in the jurisdiction without requiring some type of business presence.

6. The VAT registration threshold refers to the amount, measured in currency, of taxable supplies made within or into a jurisdiction, below which non-resident suppliers are relieved of the obligation to both register for and collect VAT as described in Section 3A.3.5.

7. Refers to any regime or measure that makes financial intermediaries, such as banks and PSPs, responsible for the collection of VAT on payments for taxable services and intangibles.

8. The reverse charge mechanism shifts the liability to account for the tax from the supplier to the customer. This column refers to business-to-business (B2B) transactions only.

9. The Caribbean Netherlands General expenditure tax (Algemene bestedingsbelasting or ABB) is comparable with a sales tax.

10. Brazil does not operate a federal VAT system.

11. Chile's VAT Law provides for a financial intermediary withholding mechanism as a backstop measure targeted at non-compliant suppliers.

12. Colombia. (i) The VAT Law provides for a voluntary procedure before the Tax Administration (DIAN) for credit card (CC) and debit card (DC) issuers to withhold VAT at the source on behalf of the supplier (option on request of the non-resident supplier). Also, the DIAN could issue a list of non-compliant non-resident suppliers, and in that case financial intermediaries must withhold the corresponding VAT. (ii) The jurisdiction has a domestic VAT registration threshold that applies to individuals, but has no registration threshold for incorporated businesses/legal entities. However, no registration threshold applies to supplies by non-resident suppliers.

13. Costa Rica. (i) Simplified registration is encouraged in the first instance. Those affected that do not register will be subject to withholding of 13% VAT by payment card issuers (e.g. Visa, MasterCard, etc.). (ii) Local businesses are required to apply the reverse charge mechanism on their purchases of services or intangibles unless the non-resident provider (or intermediary) is registered before the Tax Administration or is subject to the financial intermediary withholding mechanism.

14. The Curaçao turnover tax (Omzetbelasting or OB), is comparable with a sales tax.

15. Dominican Republic. Once registered before the local authorities, the entity will be considered domiciled for fiscal purposes and will have to comply with all tax duties and obligations as if it were a resident entity.

16. Ecuador. For B2C transactions, payment is generally subject to a 5% currency exportation tax, which is the responsibility of the customer.

17. Paraguay's new VAT rules in relation to digital sales provided by foreign businesses to domestic customers came into effect on 1 January 2021. In common with other South American rules, the burden of the settlement and collection of the VAT due (Paraguay's standard VAT rate is 10%) will be on the local bank, the issuer of the payment card used in the purchase.

No complete information available for Belize.

Source: OECD research.

#### **4A.1.4. Financial intermediary withholding regimes – Possibility to transition to a simplified registration and collection regime**

In the LAC region, a notable feature in some jurisdictions is utilisation of regimes based on financial intermediary withholding to collect VAT on international B2C supplies of services and intangibles. Instead of collection by non-resident suppliers, these regimes impose obligations on financial institutions such as banks and payment service providers (PSPs) to withhold amounts on consumer payments to non-resident businesses as a proxy for VAT due. In certain cases, regimes require financial institutions to make a separate, additional charge to the consumer rather than withholding a portion of the payment to the supplier.

Argentina, Colombia, Costa Rica, and Paraguay currently maintain financial intermediary withholding regimes conforming to one of these approaches. Certain other LAC jurisdictions retain the legal power to utilise financial intermediary withholding as a fallback option to address pervasive non-compliance by non-resident suppliers with regimes based on supplier registration and collection.

Section 3 (see Annex B) highlights a number of challenges that make a financial intermediary withholding less suitable as a sustainable and effective solution for the collection of VAT from non-resident suppliers. This Toolkit therefore does not recommend the use of such a regime as a jurisdiction's primary mechanism for VAT collection on international trade. However, the Toolkit does recognise the benefits of jurisdictions' possession of the power to impose financial intermediary withholding on specific businesses as a secondary enforcement tool to deal with pervasive non-compliance (see Section 5 for further detail). That said, LAC jurisdictions that have already implemented a financial intermediary withholding model are well placed to transition to a simplified registration and collection regime for non-resident suppliers if and when they wish to do so, as explained further below and through Section 4 of this Toolkit.

In summary, the main practical challenges of a financial intermediary withholding regime are twofold. On the one hand, financial intermediaries rarely have the information that is required to make a correct withholding decision. This will often lead to considerable levels of over-taxation or under-taxation (notably depending on the approach adopted by the financial intermediary) and high uncertainty, complexity and significant compliance burdens and administrative costs from disputes, requests for corrections and refunds. On the other hand, these financial intermediary withholding regimes are relatively and increasingly easy for consumers to circumvent given their increasing access to a variety of options to pay for their online purchases without being subject to VAT withholding. In short, financial intermediary withholding regimes create significant complexity, compliance burdens and administrative costs while often leading to an incorrect tax result and offering relatively easy avoidance options. This will generally lead not only to an unsatisfactory outcome in terms of compliance and revenue collection but also to significant risks of competitive distortion. The following overview recalls these main challenges in further detail:

- Financial intermediaries rarely possess the transactional data that they need to make a correct withholding decision. These include information to determine whether a payment relates to a transaction that is subject to VAT in the jurisdiction from which it originates and if so, to determine the amount that is subject to withholding. This task is further complicated in VAT regimes that include multiple rates and exemptions for different supplies. This normally requires knowledge of the status and location of the parties to the underlying supply (if any) and the precise nature of the supply. Further complexity arises from the fact that many non-resident (online) suppliers have adopted arrangements whereby the payments for their supplies are processed by a third party (e.g.

a digital platform) on their behalf. Financial intermediaries will very rarely possess these necessary data, if they possess such data at all. Even if they were to have access to these data, the task of analysing each of these data will generally be far too complex to reach a correct withholding decision for the vast amounts of payments that they process on a daily basis.

- To overcome data challenges for reaching an accurate taxing decision, some jurisdictions adopt a less nuanced approach in which they permit financial intermediaries to withhold VAT at a single fixed rate (usually the standard rate) on all payments associated with a list of non-resident suppliers. This approach has often proven to be overly resource intensive, as the tax authority must continuously attempt to identify all non-resident suppliers selling into the jurisdiction in the context of a dynamic and ever-evolving online retail sector. The less targeted approach can also create large administrative burdens in correcting cases of excess or erroneous withholding, including high volumes of refund requests where banks and PSPs have applied the standard rate to payments that were in fact not subject to withholding or that were exempt of subject to a reduced rate.
- In all models for financial intermediary withholding, the banks and PSPs incur large implementation and operational costs, which they may wish to pass on to consumers, suppliers or tax authorities. In addition to building and implementing a withholding mechanism, financial intermediaries also face significant compliance burdens in relation to tax audits and monitoring of any transactional reporting processes to assure adherence with jurisdictions' privacy and data protection laws.
- The accounting and reporting systems of both non-resident suppliers and domestic business customers confront considerable difficulties in reconciling the correct accounting treatment of transactions with the withholding of VAT due by a third-party financial intermediary. This has a notable impact on the ability of accounting software programming to effectively model the consequences of transactions for cash flow, creditor and contingent liability balances.
- Many consumers will have the means to avoid and evade VAT payment obligations, especially through the use of credit cards and other payment instruments that are issued and/or administered by banks, financial institutions and other PSPs outside traditional, domestic banking. The avoidance opportunities available to consumers include the increasing number of alternative online payment options such as e-wallets administered by non-resident PSPs and the use of cryptocurrencies. Gift cards and vouchers offer an additional means of avoiding financial intermediary withholding.
- It may be more straightforward to enforce a financial intermediary withholding model in jurisdictions with a heavily regulated financial services industry, including a restricted number of participants in the retail-banking sector. However, the global trend in most jurisdictions is directed at the reform of their financial services markets to promote a more competitive, sustainable and less state-regulated environment involving many players in the retail banking sector.

The challenges faced by financial intermediary withholding regimes as highlighted in this overview make such a regime less suitable and sustainable as a country's primary mechanism for the collection of VAT on international trade. Jurisdictions that currently operate such a regime may consider transitioning to a simplified registration and collection regime, which has proven its high level of effectiveness in jurisdictions worldwide that have implemented such a regime. This subsection of the Toolkit provides some further considerations on pathways these jurisdictions can take to transition to such a simplified compliance regime for VAT collection from non-resident suppliers.

#### ***(i) Using financial intermediary withholding data to determine an appropriate VAT registration threshold***

The experience of a financial intermediary withholding regime will normally provide a rich source of data from which to facilitate the process of transitioning to and administering a simplified compliance regime for non-resident suppliers. LAC jurisdictions could use transactional data they collect under a withholding

regime to model an appropriate VAT registration threshold for non-resident suppliers under a simplified compliance regime. Jurisdictions could analyse such data revealing the value of supplies made by different suppliers, including averages of aggregate supplies, to set the threshold at a level that could generate high revenues while minimising burdens on smaller suppliers.

In considering the appropriate level of a registration threshold, jurisdictions are encouraged to consider the principles of VAT neutrality, in particular, fairness in the allocation of VAT obligations and burdens between domestic and non-resident suppliers. Jurisdictions may therefore wish to apply the same threshold to both domestic and non-resident suppliers. Jurisdictions with a very low or no domestic threshold could analyse the costs and benefits of significantly raising the threshold and extending it to non-resident suppliers, in order to provide neutrality and greater efficiency in the collection of VAT on international trade. Section 4C of this Toolkit, subsection 4C.1.1, provides further analysis of the determination of a VAT registration threshold for non-resident suppliers.

### *(ii) Additional considerations*

If jurisdictions transition from financial intermediary withholding to a simplified compliance model for non-resident suppliers, they will still need to manage any legacy issues related to the withholding regime. They will need to do so in accordance with any applicable statutory requirements and timeframes for issues such as processing of amendments to VAT returns and paying refunds to domestic business customers and consumers that have over-paid VAT or to non-resident suppliers to whom financial intermediaries have incorrectly withheld amounts on payments to consumers.

## 4A.2. Determining the administrative scope of a simplified registration and collection regime for international supplies of services and intangibles

### Guide to subsection 4A.2.

| Section | Theme   | Page |
|---------|---|------|
| 4A.2.1. | <b>Preliminary considerations before building a simplified compliance regime</b>  | 158  |
|         | <i>(i) Retaining the traditional, standard VAT registration and collection framework as an alternative for non-resident suppliers</i>         | 158  |
|         | <i>(ii) Considering regulatory frameworks beyond VAT</i>  | 158  |
|         | <i>(iii) Future-proofing regimes that initially encompass only services and intangibles</i>   | 159  |
| 4A.2.2. | <b>The collection of VAT on B2B supplies by non-resident suppliers: Simplified registration and collection regime or distinct B2B regime?</b> | 159  |
|         | <i>(i) Distinguishing between B2C and B2B supplies of services and intangibles</i>  | 159  |
|         | <i>(ii) Implementing a reverse charge mechanism for B2B supplies</i>  | 159  |
| 4A.2.3. | <b>Economic activities in scope of the simplified registration and collection regime</b>  | 162  |
|         | <i>(i) Determining in-scope supplies of services and intangibles – The broad versus the targeted approach</i>                                 | 162  |
|         | <i>(ii) Identifying non-resident suppliers that will have an obligation to register</i>   | 163  |

The remainder of Section 4A of this Toolkit will focus on distinct features of the recommended policy framework for the collection of VAT on B2C supplies of services and intangibles from non-resident suppliers, for jurisdictions to consider when designing the administration for a simplified VAT registration and collection regime for these supplies.

By way of reminder, as the introduction to subsection 3A.1 and subsection 3B.3.2 make clear, the respective policy frameworks that the OECD recommends for collecting the VAT from non-resident suppliers with regard to B2C supplies of services and intangibles, on the one hand, and imports of low-value goods, on the other hand, are substantially alike in many key respects. Jurisdictions definitely can and are advised to utilise the same administrative, operational and IT infrastructure for managing the VAT obligations of non-resident suppliers of all of these types of supply wherever possible, i.e. all forms of digital trade. Due to the significant efficiencies that jurisdictions can achieve from taking this common approach to supplies of services, intangibles and low-value goods, the Toolkit provides guidance on the majority of elements of administration that apply to all forms of digital trade at Section 4C. Similarly, the Toolkit provides guidance on developing operational and IT infrastructure that generally can encompass all forms of digital trade at Section 4D.

#### **4A.2.1. Preliminary considerations before building a simplified compliance regime**

##### ***(i) Retaining the traditional, standard VAT registration and collection framework as an alternative for non-resident suppliers***

There are circumstances where non-resident suppliers may find it more appropriate to access the standard VAT registration and collection regime in respect of their B2C supplies of services and intangibles that are subject to VAT in a jurisdiction (see subsection 4A.1). This may arise because of domestic VAT obligations on other types of supply that they make, because of direct tax obligations (e.g. those related to the presence of a “permanent establishment”), because of other tax laws, or due to the desire to recover input VAT on costs in the jurisdiction, among other reasons.

It is difficult, if not impossible, however, for a non-resident supplier to register for VAT under the standard regime in light of the current VAT rules in many LAC jurisdictions. For example, more than half of LAC jurisdictions that apply VAT to international services and intangibles prohibit standard registration by non-residents if they do not have some type of business presence in the jurisdiction (see Table 4A.2 at subsection 4A.1.3 above). Additional factors may discourage non-resident suppliers from attempting to register under the standard VAT framework even where permissible. These include situations where registration by non-resident businesses requires the appointment of a fiscal representative with joint and several liability (which has been often proven to be a difficult if not impossible condition to comply with in practice), or to employ e-invoicing for all transactions (which may require disproportionate systems changes for the non-resident business) or provide significant amounts of transactional data with each VAT return.

LAC jurisdictions may wish to evaluate the operation of their standard VAT registration procedures with a view to making them accessible as an option for non-resident suppliers to comply with the jurisdiction’s VAT obligations in respect of B2C supplies of services and intangibles. For example, both Chile and Colombia already grant this right. Permitting registration by non-resident suppliers under the standard VAT regime could also include steps to minimise the imposition of administrative burdens as a condition of registration, which may not be considered strictly necessary to secure the effective collection of the VAT on these supplies and to protect the jurisdiction’s VAT system against abuse (e.g. in respect of input-VAT deduction and refunds).

Some jurisdictions have structured their law to make registration under the standard VAT regime a legal obligation with simplified compliance representing an optional alternative to avoid the obligation to register under the standard regime (e.g. Australia). In practice, the overwhelming majority of non-resident suppliers is likely to prefer the simplified compliance approach. For example, the total Australian VAT (GST) registrations by such businesses making supplies of services and intangibles to Australian consumers was 475 as of 30 June 2019. Of these, 436 did so under the simplified registration and collection regime and only 39 under the standard regime.

##### ***(ii) Considering regulatory frameworks beyond VAT***

Jurisdictions should carefully review their national laws before proceeding with implementation of the simplified compliance regime to ensure that the policy and administrative design of the simplified regime conforms to other relevant national laws. These include general laws regarding tax administration, which will encompass rules regarding security, use of electronic communications and taxpayer privacy and confidentiality. Such laws will affect the permissible design of a simplified compliance regime, with respect to such matters as publication of registrants’ identities and authorised methods of communication between tax authorities and taxpayers.

### *(iii) Future-proofing regimes that initially encompass only services and intangibles*

Several jurisdictions have extended or will soon extend their simplified compliance regimes for services and intangibles to international supplies of low-value goods. These jurisdictions include Australia, the 27 EU Member States, New Zealand, Norway, Singapore and the United Kingdom. Therefore, in designing and building administrative and operational infrastructure for simplified compliance for services and intangibles, jurisdictions are strongly advised to ensure the adaptability and scalability of their design for use in VAT collection on a wider range of activities, including the importation of low-value goods. Section 4B provides further detail on this.

#### **4A.2.2. The collection of VAT on B2B supplies by non-resident suppliers: Simplified registration and collection regime or distinct B2B regime?**

##### *(i) Distinguishing between B2C and B2B supplies of services and intangibles*

The OECD guidance that sets out the internationally agreed standards and recommended approaches for the application of VAT to internationally traded services and intangibles provides separate recommendations for B2C supplies and B2B supplies. This reflects the reality that many VAT systems distinguish between B2C and B2B supplies for the determination of the place of taxation of internationally traded services and intangibles and for the collection and enforcement of the VAT for these two categories of supplies. The OECD guidance recognises, however, that a jurisdiction's VAT system may not differentiate between B2C and B2B supplies and observes that it should therefore not be interpreted as a strict recommendation for these jurisdictions to develop separate rules or to implement different mechanisms for each category of supplies in their national legislation. Section 3A, notably subsections 3A.2.1 and 3A.3.3, provide detailed background and guidance regarding this concern.

The OECD guidance recommends the application of a simplified registration and collection regime for the collection of VAT on B2C supplies of services and intangibles by non-resident suppliers. Jurisdictions whose VAT framework does not differentiate between B2C and B2B supplies may consider allowing the use of the simplified registration and collection regime for both categories of supplies. Section 4C of the Toolkit provides detailed guidance on building the core administrative and operational infrastructure for a simplified registration and collection regime.

The remainder of this subsection provides further guidance on the collection and administration of VAT on international B2B supplies of services and intangibles. The guidance is aimed at tax authorities in jurisdictions whose VAT framework allows for a distinction between B2C and B2B supplies or that might consider reform of their VAT framework to implement such a distinction. These considerations for B2B supplies of services and intangibles may likewise apply in principle to imports of low-value goods, if jurisdictions wish to provide simplifications to domestic businesses importing such goods. The decision whether to extend the guidance for B2B supplies of services and intangibles to B2B supplies of low-value goods will depend on an assessment of the relative benefits and risks of doing so in the goods context, notably revenue collection and fraud risks for higher value consignments and the availability of alternative collection mechanisms on B2B supplies of goods such as the traditional customs authority framework.

##### *(ii) Implementing a reverse charge mechanism for B2B supplies*

OECD guidance recommends a "self-assessment" or "reverse charge" as the principal mechanism for the collection of VAT on B2B supplies of services and intangibles by a non-resident supplier. Subsections 3A.2 (notably 3A.2.1 and 3A.2.7) and 3A.3 (notably 3A.3.3) explain the rationale for the application of a reverse charge mechanism and its operation. In brief, a reverse charge mechanism makes domestic business customers responsible for accounting for and, where applicable, remitting the VAT on the services and intangibles purchased from non-resident businesses. This provides significant administrative relief to non-

resident suppliers by eliminating any obligation for them to register in a jurisdiction for B2B supplies, while offering cash-flow relief to domestic business customers and removing the revenue risks that could arise if non-resident suppliers collected VAT on high-value B2B supplies that is claimed as recoverable or refundable input VAT by domestic business customers.

Some jurisdictions provide an exception to the reverse charge obligation with respect to supplies on which domestic business customers have the full right of input VAT recovery by waiving the requirement for domestic business customers to record a reverse charge in these circumstances (e.g. Australia and New Zealand).

Many, if not most, LAC jurisdictions that apply VAT to international services and intangibles have a reverse charge mechanism in place for B2B supplies as part of their VAT frameworks (see Table 4A.2 in subsection 4A.1.3 above). Other jurisdictions may consider implementing such a regime. The remainder of this subsection provides guidance for the implementation and the operation of a reverse charge regime for the collection on B2B supplies of services and intangibles by non-resident suppliers.

Jurisdictions that implement a reverse charge mechanism to B2B supplies of services and intangibles by non-resident suppliers are advised to consider the following:

- **Ensure clear rules as to when non-resident suppliers must register under the standard VAT regime.** Any rule that imposes a specific treatment for supplies by non-resident businesses requires a clear definition of the businesses that are considered as non-resident suppliers and whose supplies are therefore subject to that treatment. This will normally exclude non-resident suppliers that are considered to be carrying on a business in the jurisdiction for VAT purposes and will therefore be treated as a resident or in the same way as a resident. For example, a jurisdiction might require a supplier that makes supplies of services and intangibles remotely from abroad, but also makes other types of supplies in the taxing jurisdiction, to register under the standard VAT regime for all supplies.
- **Early communication and guidance.** Jurisdictions that plan to introduce a reverse charge mechanism should communicate this reform early in the process to all key stakeholders and provide appropriate lead-time for them to implement corresponding systems changes. Stakeholders include non-resident suppliers, domestic businesses, and accounting software providers, among others.
- **Clearly identify the categories of domestic business that are subject to the reverse charge obligation.**
  - Jurisdictions may limit the application of the reverse charge to VAT-registered domestic businesses. They should then instruct non-resident suppliers to treat non-VAT-registered businesses as private consumers (and to account for such sales under a simplified compliance regime for international B2C sales if they have implemented such a regime).
  - Tax authorities should clearly communicate to domestic businesses any other circumstances in which the reverse charge does not apply. For example, the jurisdiction may prohibit the application of the reverse charge mechanism in cases in which other parties are contractually involved in making the supply that have a presence in the taxing jurisdiction such as a resident agent of the non-resident supplier.
- **Determining the customer status of a domestic purchaser.** Non-resident suppliers will need clear rules outlining the basis and any corresponding indicia on which they must determine whether a customer is a business or a private consumer. These rules could include guidance on the circumstances in which a supplier can rely upon the information included in the contractual arrangements with its customer, typically in the context of high-value supplies of services. Box 4A.4 below sets out the indicia presented in the OECD Collection Mechanisms Report and which are also outlined in subsection 3A.3.5.

- **What if a domestic business that is subject to a reverse charge obligation is charged VAT by a non-resident supplier?**
  - Jurisdictions sometimes insist that the domestic business customer apply a reverse charge regardless of whether the non-resident supplier charges VAT. The customer's redress would then be to seek a refund from the non-resident supplier. A limited application of the reverse charge rule, however, may assist in mitigating compliance complexity and cash-flow impact for these domestic businesses.
  - Jurisdictions could consider a concession to enable domestic business customers to recover the input VAT that was inadvertently charged by non-resident suppliers in such cases on low-value and low-risk purchases (typically below a specified materiality threshold).
  - Section 4C discusses the issue of input VAT recovery and refunds in general.
- **Waivers of the obligation to perform a reverse charge.** Jurisdictions may decide to provide further administrative relief to domestic business customers by removing the obligation to perform a reverse charge if the customer is entitled to full recovery of input VAT on the supply. In this situation, customers would implement a reverse charge only where they entirely or partially make exempt supplies or purchase supplies for private/non-business use.
- **Tools that suppliers can use to validate a VAT registration number.** A significant form of assistance for non-resident suppliers is the availability of a mechanism they can use to automate validation of domestic customers' VAT registration numbers in real-time. In practice this would involve jurisdictions' provision of an application programming interface (API) that suppliers could use to link their internal systems to an electronic register of VAT registration numbers maintained by the tax authority in the taxing jurisdiction.
- **Interactions between the reverse charge mechanism and the VAT registration threshold.** The VAT laws in some jurisdictions require non-VAT-registered business customers to include the value of purchases they make from non-resident business suppliers (which are subject to a reverse charge obligation for VAT-registered domestic businesses) as part of their turnover for their calculation of the VAT registration threshold.
- **Appropriate anti-abuse and penalty provisions to address fraudulent behaviour by consumers who misrepresent themselves as businesses.** These could include provisions prohibiting a private consumer from falsely stating that it is a business customer, subject to appropriate administrative penalties.

#### Box 4A.4. Indicia for determining the status of the customer – Indicative typology

- An identification number, such as a VAT registration number or a business tax identification number indicating the business identity and registration of the customer; or
- A certificate issued by the customer's competent tax authority, which indicates the business identity and registration of the customer; or
- Information available in commercial registers; or
- Commercial indicia that may provide a reliable indication of the status of the customer, individually or in combination with other indicia. These may include:
  - the nature and/or specific features of the supply, e.g. the supply of digitised music with no entitlement to the embedded intellectual property rights might indicate that the customer is not a business whereas the supply of software that is licensed for business use across a large number of networked computers would indicate that the customer is a business
  - the value of the supply, e.g. the high value of a software package could indicate that the customer is a business

- the customer's trading history with the non-resident supplier. This may include records from prior transactions which could provide information on the status of the customer
- digital certificates or identity certificates (i.e. electronic credentials that are used to certify the online identity of their owner). These could serve to establish the status of the customer particularly when they include specific information about the customer's VAT registration or business tax status. The use of these certificates currently appears to be less widespread among private customers than among businesses

Source: OECD (2017), *The Collection Mechanisms Report* (OECD, 2017<sup>[2]</sup>).

#### **4A.2.3. Economic activities in scope of the simplified registration and collection regime**

##### ***(i) Determining in-scope supplies of services and intangibles – The broad versus the targeted approach***

Subsection 3A.3.5 explains the policy decision that tax policymakers and administrators must make in determining which categories of services and intangibles fall within the scope of a jurisdiction's simplified registration and collection regime. It broadly presents the options for a "broad" or a "targeted" approach. The broad approach imposes VAT collection obligations on non-resident suppliers for all supplies of services and intangibles that they can make remotely to consumers in a jurisdiction. The targeted approach restricts VAT collection obligations on non-resident suppliers to specified supplies of services and intangibles, typically those that policymakers would identify as digital services and products (e.g. digital content purchases, online subscriptions to digital content, software services, licensing of content and software, telecommunications and broadcasting).

While both approaches have certain merits, the international trend favours the broad approach. The preference for the broad approach reflects the fact that it offers a number of advantages in terms of administrative simplicity, neutrality between suppliers of different categories of services and intangibles, neutrality between competing domestic and foreign suppliers, and expansion of the tax base to maximise VAT revenue generation.

From the perspective of building an effective administration for simplified compliance regimes for non-resident suppliers, jurisdictions that have adopted the broad approach note that it has greatly simplified the communication and management of their reforms, in particular removing the need to consider most definitional questions and more comprehensively addressing domestic suppliers' level playing field concerns. By comparison, jurisdictions operating a targeted approach will face definitional challenges and these can, in turn, create difficulties for businesses that face the task of determining which supplies are in and out of scope across multiple jurisdictions.

By way of example, Australia defines the scope of application for suppliers of intangibles and services from abroad in its legal guidance as supplies of "services, rights or digital products to an Australian consumer" (Australian Taxation Office, 2017<sup>[59]</sup>). This guidance does not confine the definition of services to those that are of a distinctly "digital" nature and so a wide range of services that non-resident suppliers can provide remotely are in scope, including accounting, architectural designs, and legal advice, among other services.<sup>42</sup>

<sup>42</sup> Australia makes an exception for non-resident digital platforms, which need to account for VAT only on digital services and products. This is because remote supplies of services and intangibles by non-resident suppliers through digital platforms are overwhelmingly digital in nature. However, it is not necessary for jurisdictions to restrict the VAT collection responsibilities of digital platforms in this manner.

New Zealand is another jurisdiction that has adopted a broad approach by applying its VAT to all B2C intangibles and services. Jurisdictions that take a targeted approach include the European Union<sup>43</sup> and South Africa<sup>44</sup>, although the European Union expands its rules to take the broad approach from 1 July 2021 onwards.

***(ii) Identifying non-resident suppliers that will have an obligation to register***

Section 4C of this Toolkit provides an in-depth discussion of the process of communicating directly with non-resident suppliers (see in particular see subsection 4C.4). The identification of such suppliers may not always be easy and thus the Toolkit provides guidance to jurisdictions on how to identify them. The following examples of best practice reflect those adopted by tax authorities that have successfully implemented a simplified registration and collection regime for VAT on B2C supplies of services and intangibles by non-resident suppliers:<sup>45</sup>

- Acquiring transactional data from a jurisdiction’s “Financial Intelligence Unit” or similar department. For example, the Australian Taxation Office has a formal arrangement to source information from the Australian Transaction Reports and Analysis Centre (AUSTRAC), which includes transactional reports for transactions that, for example, have been facilitated by one of the largest e-wallet services providers. A simple search by entity name can usually identify both aggregate and full transactional data for a particular non-resident, for which the e-wallet provider has facilitated transactions. The following link contains a list of similar entities for other tax jurisdictions: <https://www.egmontgroup.org/en/membership/list>.
- Consulting the registration lists of jurisdictions that have already implemented simplified compliance regimes. These are sometimes available on tax authorities’ websites, but, if not, jurisdictions may request them through Exchange of Information provisions in their tax treaties or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC).
- Consulting lists available from commercial data “web-scraping” entities (such as Alexa or SimilarWeb), which will show the top websites (by category) used by the population in a jurisdiction. These data are not financial but rather relate to the number of “visits” made and accordingly show the most popular websites rather than the highest revenue generators.
- Financial intermediaries can also provide a rich source of transactional data on consumer payments. Some LAC jurisdictions, like Argentina and Costa Rica, have already adopted this approach when determining which non-resident suppliers should be subject to VAT as part of their financial intermediary withholding regimes. While this Toolkit does not recommend adoption of such regimes, jurisdictions that have adopted them can utilise available transactional data to manage the transition to the OECD policy framework more efficiently.

Of course, the identification of the largest non-resident suppliers and digital platforms should be a priority in this process.

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<sup>43</sup> See European Commission, *Explanatory notes on the place of supply of TBE services* at [https://ec.europa.eu/taxation\\_customs/business/vat/telecommunications-broadcasting-electronic-services/content/explanatory-notes-place-supply-tbe-services\\_en](https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/content/explanatory-notes-place-supply-tbe-services_en)

<sup>44</sup> South Africa initially adopted a targeted approach when the legislation was first introduced in 2014 but later has amended its regulation to broaden the scope of “electronic services”. Please see National Treasury of South Africa (2019), *Explanatory Memorandum: Regulations prescribing electronic services for the purpose of the definition of “electronic services” in Section 1(1) of the Value-Added-Tax Act, 1991* at <http://www.treasury.gov.za/publications/other/Explanatory%20Memorandum-Regulations%20prescribing%20electronic%20services%20-%2018%20March%202019.pdf>

<sup>45</sup> These jurisdictions include Australia, New Zealand and Singapore.

## **Section 4B. Administrative and Operational Implementation for Imports of Low-Value Goods**

(In particular for imports of low-value goods from online sales)

## Key messages

### Background and general overview:

Section 4A of this Toolkit provides guidance on the administrative and operational implementation of the recommended policy framework for the collection of VAT on supplies of services and intangibles by non-resident suppliers. It provides guidance on project management and on the administrative implementation of the specific recommended policy approaches that apply to supplies of services and intangibles by non-resident suppliers.

This Section 4B builds further on the guidance provided in Section 4A, focusing on the administrative and operational implementation of the recommended policy framework for the collection of VAT on imports of low-value goods. This reflects the recommendation for a sequenced implementation of the recommended policy framework for the collection of VAT on digital trade, focusing first on online sales of services and intangibles and subsequently on imports of low-value goods from online sales.

Section 4C provides guidance for the design of a simplified VAT registration and collection regime for non-resident suppliers, which applies both to supplies of services and intangibles and to the imports of low-value goods. Section 4D finally focuses on the central operational and IT infrastructure that supports these regimes.

### The core aspects covered in Section 4B and the associated guidance can be summarised as follows:

- **Sequencing implementation:** This Toolkit recommends that jurisdictions consider sequencing the implementation of reforms to impose VAT collection obligations on non-resident suppliers, focusing first on services and intangibles and subsequently extending these obligations to imports of low-value goods. Reforming VAT collection frameworks for imports of low-value goods can prove more complex, particularly due to the connection with customs processes. Nevertheless, even at the outset of designing a simplified compliance regime for services and intangibles, jurisdictions should involve senior administrative, IT and technology staff to assess all of the principal additional features and functionality that the regime would need to support extension to VAT on imports of low-value goods.
- **Project management:** The administrative and operational implementation of a regime for non-resident suppliers of low-value goods requires sound project management, just as for a regime for services and intangibles. Jurisdictions should thus consider the analysis of project governance and project management at Section 4A. In addition, particular considerations relating to imports of low-value goods include the need for:
  - Tax policymakers and administrators to collaborate closely with customs authorities right from the beginning of the policy design process
  - Broader business consultation as typically the number of business involved in a supply or the supply chain logistics for low-value goods is higher compared to services and intangibles
  - A potentially longer timeframe for implementation because of the increased complexity related to imports of goods. Based on international experience, jurisdictions should consider 12-18 months as the minimum period of lead-time from the adoption of new laws until such laws come into force.
- **Administrative, operational and IT infrastructure:** As the notes on Sections 4C and 4D above state, there are significant opportunities for jurisdictions to employ the same simplified compliance infrastructure that they use for services and intangibles and utilise it for international B2C supplies of low-value goods. For efficiency and neutrality, it is advised that any revenue-based VAT registration threshold for non-resident suppliers apply on the basis of the aggregate of all taxable supplies that a non-resident supplier makes and not separately by type of taxable supply. Ideally, non-resident suppliers should be able to submit consolidated VAT returns and make consolidated payments covering all supplies that are subject to VAT under a jurisdiction's simplified compliance regime.

- **Central role for digital platforms, including full VAT liability regimes:** The full VAT liability regime for digital platforms can significantly enhance the effectiveness and efficiency of the policy framework that the OECD recommends for VAT collection on international digital trade including imports of low-value goods.
- **Roles for other intermediaries:** Transporters could have a fallback role in collecting VAT on behalf of customs authorities when a non-resident supplier does not collect VAT on imports of low-value goods at the time of supply. This Toolkit does not recommend the use of financial intermediary-led VAT withholding mechanisms as primary mechanism for VAT collection on international B2C supplies. However, jurisdictions could consider the use of financial intermediary withholding as a fallback option to address persistently non-compliant, non-resident suppliers that refuse to register and collect VAT.
- **Determining and administering low-value consignment relief thresholds for VAT and customs duty:** An important policy decision is whether a jurisdiction wishes to (continue to) operate a VAT low-value consignment relief threshold and, if so, to determine its appropriate level. Jurisdictions have broadly taken two distinct approaches when implementing regimes for VAT collection by non-resident suppliers on imports of low-value goods:
  - **“No VAT thresholds”:** Some jurisdictions have removed *the low-value consignment relief threshold for VAT* on imports of goods, meaning VAT is due on all imports of goods. They have combined this with optional or mandatory VAT registration and collection responsibilities for non-resident suppliers and digital platforms for all imports of goods below *the low-value consignment relief threshold for customs duty*. This approach necessitates clear mechanisms to prevent double taxation at importation, where the supplier or platform has already collected VAT at the time of supply
  - **“VAT registration and transactional thresholds”:** Some jurisdictions have maintained a low-value consignment relief threshold for VAT at item-level or consignment-level, often setting it at a relatively high level and at the same level as the low-value consignment relief threshold for customs duty. Under this approach, customs authorities will in general clear imports of items or consignments with a value below that level without assessment for import VAT. This is then typically combined with a revenue-based VAT registration threshold for non-resident suppliers of such low-value goods to final consumers in that jurisdiction, and an obligation for these suppliers to register for and collect VAT on all imports of low-value goods they sell if their revenues exceed that registration threshold.
- **Goods subject to excise duty:** The Toolkit recommends excluding goods to which excise duties apply (e.g. alcohol, tobacco, perfume, etc.) from the scope of VAT collection obligations for non-resident suppliers on imports of low-value goods.
- **Valuation of goods:** Jurisdictions should ensure that valuation of goods under simplified compliance regimes aligns appropriately with customs laws. They may want to consider providing solutions and guidance concerning currency conversion issues, the treatment of bundles of low-value goods in a single consignment, and the treatment of mixed bundles of low-value and high-value goods in a single consignment.
- **B2B supplies:** Jurisdictions should decide on the treatment of imports of low-value goods supplied to business customers. Jurisdictions that do not distinguish between B2B and B2C supplies could consider applying the simplified compliance regime to both B2C and B2B supplies. Jurisdictions that do make a distinction between B2B and B2C supplies could consider applying a reverse charge or “postponed accounting” schemes for B2B supplies of imports of low-value goods, subject to specific conditions to minimise risks of fraud and non-compliance. If the simplified compliance regime is restricted to B2C supplies, jurisdictions should consider measures to avoid double taxation for cases where a non-resident has collected VAT on B2B supplies for which the domestic business customer will perform a reverse charge or settle the VAT due directly with customs authorities.
- **Extension of the full liability model for digital platforms to certain domestic supplies of goods by non-resident suppliers – The fulfilment house scenario:** There are particular non-compliance risks connected

with supplies by non-resident suppliers that make domestic supplies to consumers in a jurisdiction, notably those that utilise domestic fulfilment house businesses in the sales process. To address these risks, jurisdictions could consider extending the full liability model for digital platforms to include all domestic supplies of goods that non-resident suppliers make. Alternatively, they could extend the full liability regime on a targeted basis to include only domestic supplies that non-resident suppliers make through fulfilment houses.

- **Minimising risks of double taxation and unintended non-taxation of imports of low-value goods:** Information reporting requirements and data sharing will be useful to support tax and customs authorities' strategies to minimise risks of double taxation, under-taxation and unintended non-taxation under a simplified compliance regime for imports of low-value goods. In designing such measures, jurisdictions may want to build upon international standards and ensure the necessary information flow between customs and tax authorities. This is likely to require the involvement of customs officials or staff with appropriate customs expertise in the design and development of the operational and IT infrastructure for the simplified compliance regime.
- **Facilitating fast-track customs clearance processes:** Any policy framework that transfers the VAT collection on imports of low-value goods from the customs authorities to non-resident suppliers should recognise the continuing operational independence of customs authorities to subject all goods to inspection, notably in respect of product safety and security. From a revenue assessment and collection perspective, however, a regime that transfers VAT collection to non-resident suppliers will provide opportunities for fast-track customs clearance of these goods. Fast-track customs clearance creates an important incentive for non-resident suppliers to comply with their VAT obligations under a simplified compliance regime for imports of low-value goods.

**Note on Section 6 Checklists:** Readers will find a comprehensive set of checklists at Section 6 of the Toolkit. The purpose of these checklists is to support the design and implementation of an effective strategy for the collection of VAT on international B2C trade. The checklists do this by distilling and mapping out the main messages from all of the key areas that the Toolkit covers: policy, legislation, administration, operational and IT infrastructure, as well as audit and risk management strategies. This includes coverage of the subjects that Section 4B addresses in depth.

## Guide to Section 4B

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### 4B.1. Roadmap for successful administrative and operational implementation

#### Guide to subsection 4B.1.

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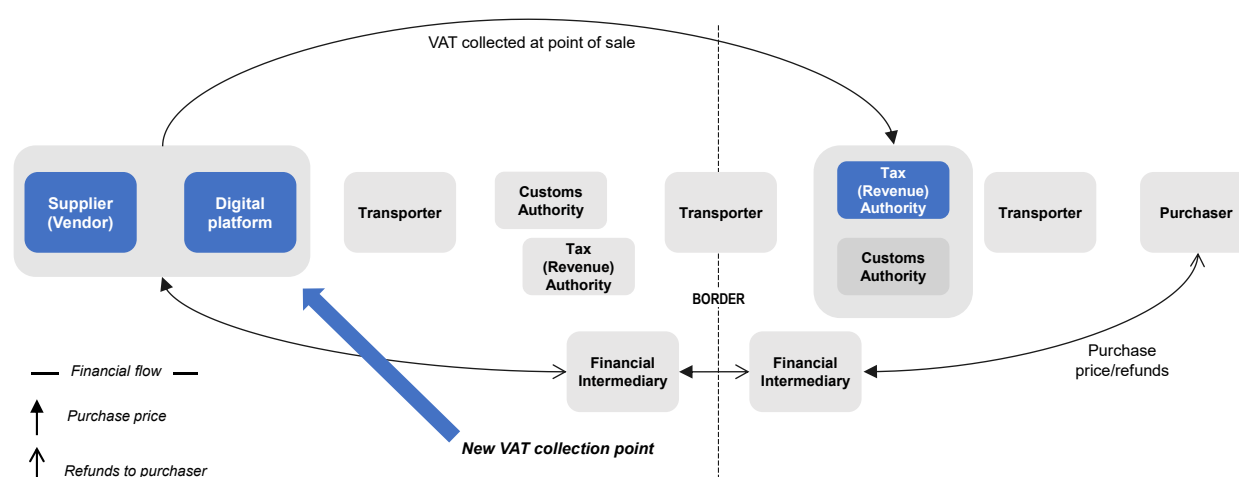
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### **4B.1.1. Introduction to the implementation of the recommended policy framework for VAT collection on international B2C supplies of low-value goods**

At the time of writing this Toolkit (early 2021), a growing number of jurisdictions had implemented or were in the process of implementing measures that reflect the OECD guidance for the collection of VAT on imported low-value goods from B2C online sales. These jurisdictions include Australia, New Zealand, Norway, Singapore, the United Kingdom and the 27 Member States of the European Union.<sup>46</sup>

Section 3B of the Toolkit explains in detail the recommended policy framework based on OECD guidance. This framework envisions shifting responsibility for VAT collection on imported low-value goods that are sold online by non-resident suppliers to private consumers in the jurisdiction of importation – a shift from customs authorities to these non-resident suppliers (or to online marketplaces and/or other digital platforms and intermediaries). Although these goods principally comprise imports, they may also include certain domestic supplies made by non-resident suppliers, such as those made through local fulfilment warehouses. The policy framework recommends that jurisdictions require these non-resident suppliers to remit the VAT on these imports of low-value goods through a simplified registration and collection regime, analogous to the regime recommended for international B2C supplies of services and intangibles. Finally, the policy framework recommends implementing a central role for digital platforms in the collection of the VAT on these imports of low-value goods, including a full VAT liability regime for such platforms in defined circumstances. The figure below illustrates the pattern of VAT collection for imports of low-value goods under a simplified registration and collection regime.

**Figure 4B.1. Overview of VAT collection for imports of low-value goods under a simplified registration and collection regime**



Source: OECD analysis.

<sup>46</sup> An overview of the key features of the measures adopted by jurisdictions that have implemented a simplified registration and collection regime for online sales of goods is provided in Annex E.

The OECD and early implementing jurisdictions developed this approach in conjunction with other international organisations, including the World Customs Organization (WCO). The WCO's *Cross-Border E-Commerce Framework of Standards* (World Customs Organization, 2018<sup>[60]</sup>) acknowledges and supports close co-operation between tax and customs authorities in the adoption of models that move VAT collection on low-value goods away from customs authorities at a jurisdiction's borders and ports of entry and towards the non-resident suppliers that supply the goods.

Section 4B recognises the importance of national tax and customs law and the role of the Universal Postal Union (UPU)<sup>47, 48</sup> in connection with the administrative and operational implementation of a VAT collection regime addressed to imports of low-value goods, particularly with respect to the regulation of the provision of data, including advance electronic data, to support the operation of simplified registration and collection regimes and the avoidance of double taxation.

Section 4A of the Toolkit provides a summary roadmap for implementation of simplified registration and collection regimes for international B2C supplies of services and intangibles. As noted in the previous paragraphs, the policy framework proposed by the Toolkit for imports of low-value goods is substantially the same in many key respects as the framework proposed for international B2C supplies of services and intangibles. These similarities include utilisation of the same central administration, operational and IT infrastructure for simplified VAT registration and collection for non-resident suppliers of all types of international supplies and all areas of digital trade. Tax policymakers developing measures for international supplies of low-value goods will therefore benefit from consulting Section 4A in addition to Section 4B.

Section 4B provides a comparable summary roadmap for implementation of the OECD policy framework for imports of low-value goods as well as detailed guidance on the design of administrative and operational infrastructure for the elements of the policy framework that are distinct to VAT collection on imports of low-value goods. Sections 4C and 4D of the Toolkit provide detailed guidance regarding administrative and operational infrastructure that jurisdictions can develop to encompass all international B2C supplies, including goods, services and intangibles. Neither Section 4B nor the Toolkit as a whole provides recommendations directed specifically at collection of customs duties as these lie outside the scope of this work.

### *(i) Summary of rationale for adopting the recommended policy framework*

Section 3B of the Toolkit analyses the difficulties of applying the traditional customs authority-based collection model for VAT on imports of low-value goods and articulates the rationale for adoption of the recommended policy framework. This subsection briefly summarises the main points of the analysis.

The cost of border collection for imports of low-value goods can be high. Many jurisdictions have therefore applied low-value consignment reliefs for both customs duties and import VAT, which are often determined at different levels for customs duties and import VAT. These low-value consignment reliefs relieve customs authorities of the obligation of collecting customs duty for goods under the *de minimis* threshold value for customs duty, and of VAT on goods under the *de minimis* threshold value of the import VAT. The World Trade Organization (WTO), the OECD, the WCO, and the International Chamber of Commerce (ICC) have all historically recommended the adoption of such *de minimis* thresholds and the WCO Revised Kyoto Convention (RKC) embraces this approach.

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<sup>47</sup> See WCO–UPU (2018), *Postal Customs Guide* at [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/upu/wco\\_upu-postal-customs-guide.pdf?db=web](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/upu/wco_upu-postal-customs-guide.pdf?db=web).

<sup>48</sup> See WCO–UPU guidelines on the exchange of electronic advance data (EAD) between designated operators and customs administrations at <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/upu/joint-wco-upu-guidelines.pdf?db=web>.

The level at which jurisdictions set these low-value consignment relief thresholds varies greatly among jurisdictions. In addition, some jurisdictions, including in the LAC region, set the thresholds in the currencies of major trading partners such as in USD. However, there are several jurisdictions that have no low-value consignment relief threshold for customs duties, import VAT or both.

The VAT exemptions for imports of low-value goods have become increasingly controversial in the context of the growing digital economy. At the time when most of these VAT exemptions were introduced, Internet shopping did not exist and the level of imports benefitting from the relief was relatively small. A growing number of countries have seen, and continue to see, a significant and rapid growth in the volume of imports of low-value goods on which VAT is not collected as a result of VAT low-value consignment relief. This results in increasingly significant VAT revenue losses and growing unfair competitive pressures on domestic retailers who are required to charge VAT on their sales to domestic consumers. It is no longer considered acceptable in an increasing number of countries that this continually growing volume of goods from online sales is imported free of VAT as a consequence of the exemption for imports of low-value goods. The concern is not just the loss of VAT revenue, but also the unfair competitive pressure on domestic businesses that are increasingly incapable of competing against the continually rising volumes of VAT-free online sales of goods, with associated negative impacts on domestic employment and direct tax revenue.

Tax and customs administrations are also facing challenges in respect of the collection of VAT at importation above the VAT threshold. Customs authorities carry out many other critical functions including the facilitation of trade, the control of drugs and drug precursors, the control of intellectual property rights and importantly the safety of citizens in respect of the importation of dangerous goods and the threat of terrorism. Against this background, the WCO has observed that the growth of trade in goods from e-commerce is presenting significant challenges to customs and tax authorities, and published a *Cross-Border E-Commerce Framework of Standards* in 2018, one of the core objectives of which is ensuring efficient revenue collection.

The challenges faced by tax authorities even regarding the circumstances under which VAT and customs duties should be collected, i.e. on imports above the respective VAT and/or customs duties *de minimis* thresholds, indicate that a solution that simply removes the low-value exemption is not the answer. Such a solution without supporting measures is likely to be counter-productive, with customs authorities having to control more consignments and creating secondary effects for other functions. The approach presented in the OECD guidance, which forms the basis of the solution presented in this Toolkit, reflects a wide international consensus on the most effective solution for a more efficient collection of VAT on low-value goods. This approach moves the collection of the VAT on imports of low-value goods away from the customs process at the border towards the non-resident suppliers of these goods (and/or to online marketplaces, and/or other digital platforms or intermediaries). It requires the non-resident supplier to be responsible for collecting the VAT at the time of the goods' sale and remitting it to the tax authorities in the jurisdiction of importation through a simplified registration and collection mechanism.

This recommended policy framework for imports of low-value goods has a number of advantages for tax revenue collection, neutrality, and administrative efficiency and compliance. These advantages include:

- Reducing the administrative costs of collection for governments and relieving customs authorities of the burden of the traditional collection framework for VAT on imports of low-value goods. This strategy allows customs authorities to focus on important security and public protection matters.
- Non-resident suppliers, notably including digital platforms, will apply VAT to the price that a consumer pays for goods (including transport and insurance) rather than customs authorities

applying the VAT to a declared customs value. This approach addresses much of the large-scale revenue loss that occurs attributable to the undervaluation of goods on customs declarations.<sup>49</sup>

- Shifting VAT collection responsibilities away from customs authorities (and lowering the costs associated costs of such collection) provide an opportunity for jurisdictions to either:
  - Maximise the tax base by eliminating low-value consignment relief for VAT; or,
  - Maximise administrative efficiency by harmonising and raising both the VAT and customs duty low-value consignment relief thresholds, in conjunction with the introduction of a revenue-based registration threshold for non-resident suppliers to secure the collection of VAT on goods they sell to private consumers in the jurisdiction.
- Administrative and operational synergies for both tax authorities and non-resident suppliers through utilisation of the same infrastructure for registering, reporting and paying VAT on international B2C supplies of low-value goods as for B2C supplies of services and intangibles by non-resident suppliers.
- Elimination of the fees that transporters and other intermediaries charge when collecting VAT from consumers on behalf of customs authorities under the traditional framework.
- VAT collection at the point of sale avoids a number of limitations for VAT collection at the point of importation that apply in certain circumstances and/or for certain imports under the RKC and the *Immediate Release Guidelines* (World Customs Organization, 2018<sub>[61]</sub>).

***(ii) Coordinating the application of the simplified compliance regime for VAT collection on B2C supplies of services and intangibles and on imports of low-value goods***

Jurisdictions that have implemented a simplified compliance regime for B2C supplies of services and intangibles by non-resident suppliers, as recommended by this Toolkit, will be able to utilise most of the same administration and operational infrastructure to implement the policy framework for low-value goods. This includes “back-end” IT infrastructure such as registration, returns and reporting, and payments systems, as well as “front-end” infrastructure such as online registration and tax account management portals for suppliers. Harmonising administration and operations in this way may produce significant costs savings for tax authorities.

**4B.1.2. Summary roadmap for implementation**

Jurisdictions must develop an overview of the design and costs they expect for administration and operational infrastructure at an early stage in developing their policy framework for imports of low-value goods. Tax policymakers and administrators must collaborate closely with customs authorities, and they should do so at an early stage in the process of designing policy and legislation. Customs authorities have a critical role to play in the clearance of imports, a role that includes checking for evidence of whether suppliers have accounted for VAT on imports of low-value goods. This role becomes even more important in cases where jurisdictions abolish their VAT low-value consignment relief threshold.

Suppliers and transporters, such as express carriers and postal authorities, may all need to amend their customs reporting procedures to allow customs authorities to identify consignments for which suppliers have already accounted for VAT, as this will be vital to facilitating fast-track clearance of consignments and prevent double taxation.

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<sup>49</sup> See Universal Postal Union (2019), *Convention Manual Update 1*, Article 20, Customs control (Customs duty and other fees) at <https://www.upu.int/UPU/media/upu/files/UPU/aboutUpu/acts/manualsInThreeVolumes/actInThreeVolumesManualOfConventionMaj1En.pdf>.

*(i) Critical decisions and actions at the policy design phase*

Tax policymakers and administrators will make many key decisions at the policy design stage, which will affect the effectiveness and efficiency of simplified compliance regimes for imports of low-value goods. Section 3A identified the principal elements at subsection 3A.3.4. The policy and legislative checklist at Section 6 also outlines these elements of policy design that affect the overall effectiveness of administration and operational infrastructure. For the benefit of readers focusing primarily on the building of administrative and operational infrastructure, this subsection provides a brief summary of key items. All relevant parties to the development of simplified compliance regimes should collaborate from the outset in working through key decisions affecting the scope and design of a jurisdiction's regime. These include both Ministries of Finance and tax authorities. The process of collaboration should also address the investment and operating costs for tax authorities.

Key decisions affecting the administrative scope and design of simplified compliance regimes include:

- Scope of supplies and in-scope statuses of customers
- Determining customer status
- Whether, when and how to grant use of a reverse charge mechanism for domestic business customers
- Registration thresholds
- Permitting or denying access to input VAT deductions/refunds
- The role of the traditional registration regime
- The role of digital platforms
- Any transitional arrangements that apply to existing policies, which the new policy framework will supersede

As the previous subsection noted, jurisdictions are strongly advised to align these policy decisions as much as possible with the framework for the collection of VAT on B2C supplies of services and intangibles by non-resident suppliers, both for tax neutrality and administrative efficiency purposes. However, there are several critical elements in developing a framework for international imports of low-value goods, which are distinct to this import. These include:

- Determining appropriate low-value consignment relief thresholds for VAT (and possibly customs duty), including whether to abolish the relief threshold for VAT. See subsection 4B.2.
- Customs clearance processes to determine the VAT settlement status of imports. This is necessary both to protect consumers from double taxation and to prevent fraud and abuse of the regime. See subsection 4B.3.
- Cargo and postal reporting requirements to support customs clearance processes
- Rules for how suppliers and customs authorities should treat bundles of low-value goods in a single consignment that collectively exceeds the customs duty relief threshold (and that is therefore, in principle, subject to VAT collection under the normal customs procedure). Similarly, rules for how suppliers and customs authorities should treat a consignment that includes a bundle of low-value goods and high-value goods. See subsection 4B.2.
- Currency conversion rules for suppliers to determine the value of a good at the time of supply. See subsection 4B.2.
- Funding for customs and tax authorities to support the new arrangements. See subsection 4B.2.
- Profiling and communicating with suppliers that make high levels of B2C supplies of low-value goods that are imported into a jurisdiction. The population of non-resident suppliers with an obligation to register is likely to be much higher than for services and intangibles. See subsection 4C.4.

- Determining when digital platforms and other intermediaries are liable for the VAT in respect of goods sold by underlying non-resident suppliers through their platform. This may involve the adoption of additional administrative mechanisms to coordinate exchange of information between digital platforms, their underlying suppliers, transporters and customs authorities. See subsections 4B.3 and 4C.2.

**Establishing realistic timeframes for implementation:** Every jurisdiction that has thus far adopted measures to transfer VAT collection responsibilities to non-resident suppliers of low-value goods has had to delay implementation or introduce special transitional provisions. In some cases, jurisdictions provided the business community with insufficient time or guidance to adapt their internal business systems and processes and/or to secure funding and resources to design, test and implement the necessary adaptations to their compliance systems. By way of illustration of these delays to timelines:

- Australia: Start date moved from 1 July 2017 to 1 July 2018.
- New Zealand: Start date moved from 1 October 2019 to 1 December 2019.
- Norway: Start date of 1 April 2020, with recognition that the short time between enactment and commencement of the relevant laws necessitated transitional provisions.
- European Union: start date moved from 1 January 2021 to 1 July 2021.

Based on this international experience, jurisdictions should consider 12-18 months as the minimum period of lead-time from the adoption of new laws until they come into force. Such advance notice will allow businesses sufficient time to adapt their systems to ensure compliance, with the longer period appropriate if tax authorities are not able to publish guidance on how they will practically administer measures at the time of the legislation's enactment.

**Consultation with the business community.** Tax and customs authorities are strongly advised to consult with the businesses that are likely to be affected by the new rules, preferably from the policy design phase onwards. Key stakeholders and representatives include: the Business at OECD advisory group, non-resident suppliers, digital platforms, accounting and legal professionals, transporters and customs brokers, and international and national industry representatives including countries' domestic chambers of commerce and business federations. Such consultation has proven to be effective in enhancing the effectiveness of policies, laws and administrative design by identifying opportunities and constraints in relation to businesses' practices, resources and capacities.

Best practice implementation has seen tax authorities engage with businesses to develop detailed technical guidance notes explaining how tax authorities will administer the policy framework and the legislation that implements it, including examples of acceptable practices and of non-compliance, as well as details of any safeguards for businesses acting in good faith. Examples of this guidance include the notes published by the following jurisdictions: Australia, New Zealand, Norway and the European Union<sup>50</sup>.

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<sup>50</sup> See European Commission (2020), *Explanatory notes on VAT e-commerce rules* at [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/vatecommerceexplanatory\\_28102020\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/vatecommerceexplanatory_28102020_en.pdf); European Commission (2021), *Guide to the VAT One Stop Shop* at [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/oss\\_guidelines\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/oss_guidelines_en.pdf); European Commission (2020), *Importation and exportation of low value consignments – VAT e-commerce package, "Guidance for MSs and Trade"*, at [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/guidance\\_on\\_import\\_and\\_export\\_of\\_low\\_value\\_consignments\\_final.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/guidance_on_import_and_export_of_low_value_consignments_final.pdf); further information and guidance is accessible on the information portal of the European Commission "Modernising VAT for cross-border e-commerce" at [https://ec.europa.eu/taxation\\_customs/business/vat/modernising-vat-cross-border-ecommerce\\_en](https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en).

It is important to note that businesses involved in the supply chain logistics for low-value goods are an invaluable resource to advise on whether policy proposals will work in practice. These businesses, including transporters and digital platforms, have a global focus that includes exposure to measures that jurisdictions have already taken to make non-resident suppliers responsible for VAT on international supplies of low-value goods.

### *(ii) Project management*

Section 4A, at subsection 4A.1.2, provides guidance on the project management and planning processes required to successfully build and implement simplified compliance regimes for non-resident suppliers of services and intangibles. The Toolkit envisions that such a regime would be the initial step in a programme of sequential reform that could later encompass international sales of low-value goods. Therefore, the same considerations that Section 4A outlines in respect of project management will apply to implementing the policy framework for low-value goods. This recognises once again that jurisdictions can extend an existing simplified compliance regime for services and intangibles to encompass imports of low-value goods, thus removing the need to develop new administrative and operational infrastructure for many key elements of a regime for low-value goods.

### **4B.1.3. The role of digital platforms and other intermediaries**

OECD guidance suggests that a simplified compliance regime for non-resident suppliers, combined with a full VAT liability role for digital platforms under appropriate circumstances, is the most efficient and effective approach for collecting the VAT on imports of low-value goods. Recent experience of jurisdictions that have taken this approach strongly confirms this position.

Nevertheless, OECD guidance, in particular the 2015 BEPS Action 1 Report, also considers the potential of a wider range of intermediaries beyond digital platforms. The guidance analyses intermediaries' suitability on the basis of their access to critical information needed to make the correct taxing decision in respect of imports of low-value goods. The following matrix from the BEPS Action 1 Report summarises this analytical framework for the main actors:<sup>51</sup>

**Table 4B.1. Minimum information available to stakeholders in the supply and value chain**

| Stakeholder                      | Key transactional information for making correct taxing decisions |       |                        |                         |                |                            |
|----------------------------------|---|-------|------------------------|-------------------------|----------------|----------------------------|
|                                  | Nature of the goods   | Value | Country of destination | Time of import/delivery | Transport data | Tax and customs duty rules |
| Purchaser                        | ☑   | ☑     | ☑                      | ☑                       | Maybe          | Maybe                      |
| Vendor                           | ☑   | ☑     | ☑                      | Maybe                   | ☑              | Maybe                      |
| E-commerce platform <sup>1</sup> | Some  | ☑     | Maybe                  | Maybe                   | Maybe          | Some/Maybe                 |
| Express carrier                  | ☑   | ☑     | ☑                      | ☑                       | ☑              | ☑                          |

<sup>51</sup> BEPS Action 1 Report, "Annex C. The collection of VAT/GST on imports of low value goods". Please refer to "Table C.2. Minimum information available to each stakeholder in the supply chain", page 193.

| Stakeholder            | Key transactional information for making correct taxing decisions |                                     |                                     |                                     |                                     |                                     |
|------------------------|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Postal operator        | Maybe   | Maybe                               | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Financial intermediary | <input checked="" type="checkbox"/>                               | <input checked="" type="checkbox"/> | Maybe                               | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

1. This term effectively refers to what later OECD guidance and this Toolkit refer to simply as “digital platforms”. The BEPS Action 1 Report defines them as “platforms that provide a trading framework for vendors but that are not parties to the commercial transaction between the vendor and the purchaser” - 2015 BEPS Action 1 Report, page 125.

Source: OECD (2015), *The BEPS Action 1 Report* (OECD, 2015<sup>[41]</sup>).

Experience has shown that each of the information fields in the matrix is readily available in principle to most suppliers and many digital platforms. Digital platforms can normally identify the country of destination (i.e. the delivery address) and the amount the consumer pays for transportation of goods (which forms part of a composite supply with the goods). However, in many instances, platforms must rely on information provided to them by suppliers.

OECD guidance concluded that jurisdictions could consider utilising intermediaries other than digital platforms, if appropriate, in the context of the nature and scope of their policy framework. In evaluating the possible roles for other intermediaries, jurisdictions should take account of the consistency of such an approach with the approaches of neighbouring and similar jurisdictions. The greater the level of consistency in approaches among jurisdictions, the more likely that non-resident suppliers will comply easily and rapidly with simplified compliance regimes. With this note of caution in mind, the following subsections consider the role of transporters and financial intermediaries in more detail.

### *(i) Transport intermediaries*

Jurisdictions could complement a simplified compliance regime for non-resident suppliers of imports of low-value goods with a fallback role for transporters to collect VAT on behalf of customs authorities. This role for transporters would apply especially to jurisdictions that abolish their VAT low-value consignment relief.<sup>52</sup> Without such relief, import VAT becomes due on all goods imported into a jurisdiction unless the non-resident supplier or a digital platform takes responsibility for paying the VAT on these goods through a simplified compliance regime. If neither the non-resident supplier nor the digital platform assumes this obligation, then the responsibility for collection would rest either on another intermediary acting on the supplier’s behalf or on customs authorities. A jurisdiction may wish to implement a fallback role for transporters to collect VAT on behalf of customs authorities in these circumstances.

A jurisdiction will need to consider the potential cost, compliance and net revenue outcomes in respect of any regime for imports of low-value goods that relies in part on transporters.

In 2017, the Australian Productivity Commission assessed the costs of a “transporter-only” model for the collection of VAT (GST) on imports of low-value goods (Australian Government Productivity Commission, 2017<sup>[62]</sup>).<sup>53</sup> It compared these costs to the cost estimates of establishing a simplified compliance regime for non-resident suppliers and found that the costs of a transporter-based model were significantly higher than the costs under a simplified compliance regime. While this assessment is particular to Australia’s

<sup>52</sup> Subsection 3B.2 provides detailed analysis of the principal options for jurisdictions in reforming the operation of low-value consignment relief thresholds for VAT.

<sup>53</sup> Please refer in particular to the table on page 99 of the report comparing the administrative and compliance costs of different models for the collection of VAT on international B2C supplies of low-value goods.

circumstances, it illustrates the importance of evaluating the costs of different models and the implications of each for net VAT revenues, as distinct from absolute revenues.

For jurisdictions that consider a fallback role for transporters to collect VAT on behalf of customs authorities, it may be useful to note that certain jurisdictions have allowed the transporters to charge customs clearance fees to the final customers (typically the named recipients of these goods). Examples include:

- The Canada Border Services Agency’s “Courier Low Value Shipment Program”<sup>54</sup>; and
- The United Kingdom’s<sup>55</sup> management of postal import customs charges through Royal Mail<sup>56</sup> and Parcelforce<sup>57</sup>.

Customs clearance charges can often be greater than the VAT due on a low-value consignment. Jurisdictions often apply a VAT zero-rate to charge customs clearance fees<sup>58</sup> and they thus constitute an opportunity cost for governments when they must apply a zero-rate to the charge.

Jurisdictions are advised to consider the following additional concerns in relation to the possible implementation of a fallback role for transporters to collect VAT on behalf of customs authorities:

- Clarification of the fact that the customer (or importer of record if different from the customer) remains liable for VAT on imports when a transporter is operating as a fallback collection agent.
- Changes to customs procedures to effectively operate a transporter model, taking account of relevant WCO standards and guidance including the Immediate Release Guidelines (IRG) (World Customs Organization, 2018<sup>[61]</sup>) to enable fast-track processing; and
- The practical limits on domestic transporters’ ability to verify and assure the accuracy of the declared values of all high-volume, low-value consignments that they manage. As transporters do not have oversight of the sale of the goods or participate in their payment processing, they are information takers and not information makers.

**International B2B supplies of goods.** Regarding B2B importations, jurisdictions often operate schemes for eligible domestic business customers to defer payment of import VAT through “deferred, delayed or postponed accounting” schemes. This is often subject to eligibility and registration requirements. Generally, these schemes aim to minimise the cash flow impacts for businesses of importing goods, recognising that in most cases they would be entitled to recover the VAT on imports in any event. The operation of schemes of this nature reflects the reality that business importations tend to be of higher value and that customs authorities require them to make full customs declarations, often with the involvement of customs brokers. As a practical matter, businesses account for and make settlement of VAT due through establishing an account with the customs authorities or by recording the transactions on their VAT return.

<sup>54</sup> See Canada Border Services Agency (2016), *Courier Low Value Shipment Program* (Memorandum D17-4-0) at <https://www.cbsa-asfc.gc.ca/publications/dm-md/d17/d17-4-0-eng.html>.

<sup>55</sup> See HM Revenue and Custom (2021), *Notice 143: a guide for international post users* at <https://www.gov.uk/government/publications/notice-143-a-guide-for-international-post-users/notice-143-a-guide-for-international-post-users>.

<sup>56</sup> See Royal Mail, *Help with paying customs fees* at [https://personal.help.royalmail.com/app/answers/detail/a\\_id/7208#customstable](https://personal.help.royalmail.com/app/answers/detail/a_id/7208#customstable).

<sup>57</sup> See UK Parcelforce, *Why do Parcelforce Worldwide charge customs clearance fees* at <https://www.parcelforce.com/help-and-advice/receiving/why-do-parcelforce-worldwide-charge-customs-clearance-fees>.

<sup>58</sup> See Universal Postal Union (2019), *Convention Manual Update 1*, Article 20, Customs control (Customs duty and other fees) at <https://www.upu.int/UPU/media/upu/files/UPU/aboutUpu/acts/manualsInThreeVolumes/actInThreeVolumesManualOfConventionMaj1En.pdf>.

Under some arrangements, customs authorities can share information on import VAT deferrals with the tax authorities, which pre-fill the amount owing in a special field in the VAT return.

In practice, operating a postponed accounting scheme for import VAT on low-value goods may be challenging if only simplified customs declarations exist and where identifying the correct importer of record is difficult, e.g. for international consignments through postal channels. Whichever approach a jurisdiction adopts, it should communicate responsibilities and obligations clearly to domestic business importers, transporters and customs brokers.

### *(ii) Financial intermediaries*

This Toolkit does not recommend the use of financial intermediary-led, VAT withholding mechanisms as primary mechanism for VAT collection on international B2C supplies. It recognizes, however, that jurisdictions could consider the use of financial intermediary withholding as a fallback option to address persistently non-compliant, non-resident suppliers that refuse to register and collect VAT. Annex B and subsection 4A.1.4 provide analyses in further detail as to the main challenges and difficulties that such regimes can create.

Notwithstanding these reservations, this Toolkit recognises that some jurisdictions in LAC have implemented financial intermediary withholding obligations to collect VAT on B2C supplies of services and intangibles by non-resident suppliers. Table 4A.2 at subsection 4A.1.3 identifies these jurisdictions. The use of financial intermediaries to collect VAT on international B2C supplies of low-value goods would magnify many of the key challenges of withholding regimes as they apply to services and intangibles. Examples of these greater challenges include:

- Financial intermediaries' lack of critical information to make a correct withholding decision is even more acute for supplies of goods due to the generally greater number of reduced VAT rates and exemptions that can apply to goods.
- There is a greater risk of double taxation when the financial intermediary does not know the delivery address for a purchase of low-value goods. In this situation, the financial intermediary may presume that its own jurisdiction is the destination of the goods, when in fact the actual destination is in another jurisdiction where customs authorities assess the goods for import VAT, e.g. because a consumer buys a gift for a family member in a foreign jurisdiction.
- Difficulties with VAT refund applications for consumers are exacerbated when financial intermediaries incorrectly withhold VAT on zero-rated or exempted transactions, withhold too much VAT on reduced-rate supplies and in situations where consumers wish to return goods. Consumers may naturally turn to non-resident suppliers to claim a refund of the VAT that was withheld incorrectly from their account in the first instance, but these suppliers will not have received an amount of funds corresponding to the VAT. This would generate high volumes of low-value refund requests, creating unreasonable workloads for tax authorities, complexities for financial intermediaries and high compliance and cash flow costs for non-resident suppliers.
- Disaggregating and calculating withholding rates for composite supplies of services, intangibles and goods can be extremely complex, if not impossible, and create very heavy administrative burdens for financial intermediaries. A practical example of a mixed supply would be when a customer purchases a subscription to an online gaming provider and at the same time purchases related physical material such as a t-shirt and a cap with the branding of one of the provider's most popular games. Such supplies can involve multiple VAT rates and two distinct places of taxation due to the operation of different proxies for supplies of services and intangibles and supplies of goods.

#### **4B.1.4. Implementation of the OECD policy framework in practice – Comparative overview of reforms since the BEPS Action 1 Report**

Several jurisdictions have made non-resident suppliers and digital platforms responsible for the collection of VAT on imports of low-value goods in recent years, implementing a simplified compliance regime to facilitate compliance with this obligation. As first movers, the Australian, New Zealand and Norwegian reforms adopted certain common features, including:

- First and foremost, moving the VAT collection away from the traditional framework of customs authorities assessing low-value goods on the basis of a customs declaration value. Instead, these jurisdictions have imposed the obligation on non-resident suppliers and digital platforms to collect VAT at the time of supply.
- To date, all jurisdictions that have implemented this policy framework for low-value goods have restricted it to goods with a customs value at or below the jurisdictions' low-value consignment relief threshold for customs duty (i.e. the customs duty *de minimis*).
- These jurisdictions require suppliers to calculate VAT at the time of supply based on the sales price of the goods plus transport and insurance costs. This is equivalent to the “Cost Insurance and Freight” or “CIF Incoterms” value. The overall effect is to greatly mitigate systematic undervaluation of many of these low-value goods.
- All these jurisdictions have adopted a simplified registration and collection model for non-resident suppliers to collect VAT on their supplies of low-value goods to private consumers in the jurisdiction of importation (B2C supplies), with digital platforms having full VAT liability under certain circumstances. These jurisdictions combine this model for B2C supplies with a reverse charge approach for supplies of low-value goods to business customers in the jurisdiction of importation (B2B supplies).
- These jurisdictions have extended the same simplified compliance infrastructure that they had previously to collect VAT from non-resident suppliers of services and intangibles to final consumers in that jurisdiction (B2C supplies).
- All goods below the threshold for low-value customs duty relief are in scope of the obligation to register for and collect VAT (unless the supplier's revenues remain below the VAT registration threshold, as is the case in Australia and New Zealand). Where suppliers do have an obligation to register, there is no low-value relief for VAT at the time of sale nor any exclusions for gifts.
- These jurisdictions have ensured that non-resident suppliers collect VAT only on low-value goods (below the customs duty relief threshold) and that customs authorities continue to collect VAT, customs duties and other charges for goods above the low-value consignment relief threshold for customs duty.
- These jurisdictions have also ensured that customs compliance processes are as simple as possible whilst turning to information that suppliers, digital platforms and transporters use in the supply chain for customs clearance purposes. In some cases, these jurisdictions have also implemented an invoicing requirement to minimise risks of double taxation.
- These jurisdictions have allowed non-resident suppliers to register under the standard VAT regime where they have a need to recover input VAT in the jurisdiction. For example, non-resident suppliers may make a commercial decision to charge and collect VAT at the point of sale for all goods, including high-value goods, and in doing so assume liability for import VAT at importation as the importer of record for such high-value goods and thus be subject to standard VAT registration. Similarly, non-resident suppliers may store goods in bulk in domestic fulfilment warehouses prior to sale, in which case they would also be the importer of record at the time of importation.

- All these jurisdictions have developed and communicated clear rules to enable suppliers and digital platforms to acquire a clear understanding of what goods are in scope, when they must register, when they must charge VAT and how they should treat refunds and returns.

**Reforming the operation of low-value consignment reliefs for VAT.** There is one significant difference in approach among jurisdictions that have implemented, or plan to implement, the recommended policy framework for VAT collection on imports of low-value goods. This difference relates to how jurisdictions determine and operate the VAT low-value consignment relief threshold, and its interaction with the low-value consignment relief threshold for customs duty. Box 4B.1 below presents a brief explanation of VAT and customs duty low-value consignment relief thresholds. An overview of these thresholds in LAC jurisdictions is in Table 4B.2 below.

#### Box 4B.1. Low-value consignment relief thresholds for VAT and customs duty

- **Import VAT low-value consignment relief threshold:** This refers to the threshold for determining whether customs authorities should collect VAT *on the importation* of goods, which in practice a transporter may undertake on their behalf. For avoidance of doubt, if the jurisdiction has in place a simplified registration and collection regime for non-resident suppliers, then it can and should require these suppliers to collect VAT on all imports of goods below the **VAT low-value consignment relief threshold**.
- **Customs duty low-value consignment relief threshold:** This refers to the threshold for determining whether customs authorities collect customs duties *on the importation* of goods. Again, in practice a transporter may do this on their behalf. Customs duties should in principle apply only to goods above the customs duty relief threshold (see subsection 3B.3).
- **Fundamental distinction between the VAT low-value consignment relief threshold and the customs duty relief threshold:** The low-value consignment relief threshold in the VAT context relates only to the question of whether VAT is due on the importation of a good. It does not relate to the question of whether VAT should apply to the supply of that good in the jurisdiction, which is a separate taxable event for VAT purposes from the importation. By contrast, the “low-value consignment relief threshold” in the context of customs duties means that customs duties do not apply at all to goods below the threshold.

**The main question in this context is** whether a jurisdiction wishes to (continue to) operate a VAT low-value consignment relief threshold and, if so, to determine its appropriate level. The associated question is whether this jurisdiction wishes to determine the VAT low-value consignment relief threshold at the same level as the customs duty relief threshold. The decision a jurisdiction makes on this subject will affect the role of customs authorities in assessing the VAT-settlement status of imports of low-value goods. Subsection 3B.7 provides a summary of the policy options for jurisdictions, while subsection 4B.2.4 analyses and draws on the practical experiences of jurisdictions that have implemented reforms and the impacts they have on administration and operational infrastructure for both tax and customs authorities.

Of the two broadly distinct approaches that jurisdictions have adopted, Australia and New Zealand, on the one hand, and the European Union and Norway, on the other, provide good illustrations.

Australia and New Zealand have set relatively high VAT and customs duty *de minimis* thresholds of AUD 1 000 (USD 688) and NZD 1 000 (USD 648) respectively. New Zealand actually increased its VAT and duty threshold from a previous threshold value<sup>59</sup> of NZD 400 (USD 259). By contrast, the European Union will entirely remove its VAT *de minimis* from 1 July 2021 (i.e. it becomes EUR 0), although still maintaining a customs duty *de minimis* of EUR 150 (USD 171). For further contrast, Norway presents another distinct

<sup>59</sup> Previously the New Zealand Customs Service collected GST on all imported consignments with NZD 60 (USD 39) or more of duty owing. NZD 400 (USD 259) is a calculated value to reflect that approach.

approach in that it has removed its previous VAT *de minimis* of NOK 350 (USD 37), while increasing its customs duty *de minimis* to NOK 3 000 (USD 318) for certain goods.<sup>60</sup>

The European Union will be launching an “Import One Stop Shop” (IOSS), which is based on a simplified registration and collection model. It allows non-EU suppliers to account via one single digital portal for the VAT on all supplies of low-value goods that they make to customers in all EU Member States. The European Union will not operate a revenue-based VAT registration threshold for non-resident suppliers, which means in theory that a non-EU supplier should register for VAT even if it makes only a single sale of low-value goods into the European Union. However, IOSS will not be compulsory and when suppliers do not collect VAT at the time of supply, the European Union is also offering another simplification process which will utilise a transporter collection model. The import declaration will contain information that will allow customs authorities to determine if suppliers have already collected VAT prior to the importation of low-value goods. If suppliers have not already collected VAT, then the transporters will be responsible for collection, and if suppliers have already collected VAT, then no additional VAT is due upon importation and the consignments should benefit from fast-track clearance through customs authorities’ revenue collection and assessment checks.

Norway, on the other hand, has introduced a compulsory scheme, in which all non-resident suppliers of low-value goods (goods valued at NOK 3 000 (USD 318) and below) with a total turnover in Norway exceeding NOK 50 000 (nearly USD 5 300) shall register and collect VAT at the time of supply. Non-resident suppliers are allowed to manage their VAT liability through a simplified compliance regime, the “VAT on E-Commerce” (VOEC) scheme. If the supplier does not collect VAT at the time of supply, Norway’s customs authorities shall apply import VAT to the imported goods. This ensures that VAT is paid on all low-value goods. However, to ease the implementation of the new scheme, Norway is currently operating temporary transitional arrangements that mean in practice that low-value goods with a value below NOK 350 (USD 37) are not stopped at the border even there is no evidence that the supplier collected VAT at the time of supply.<sup>61</sup>

By contrast, customs authorities in Australia and New Zealand will generally not perform revenue collection and assessment checks on imports of goods with a customs value<sup>62</sup> at or below AUD 1 000 (USD 688) or NZD 1 000 (USD 648). This approach will apply regardless of whether suppliers have collected GST on those imports at the time of supply and it means that customs authorities are free to release all low-value goods as soon as the goods clear security and quarantine checks. Supporting the rationale for this approach is the application by these jurisdictions of a VAT registration threshold for non-resident suppliers, of AUD 75 000 (nearly USD 52 000) and NZD 60 000 (nearly USD 39 000) respectively. The threshold applies to the total value of all B2C supplies that a supplier makes to Australian or New Zealand consumers including services and intangibles. In practice, therefore, many smaller non-resident suppliers will legitimately be able to make VAT-free supplies to consumers in Australia and New Zealand as long as their revenues from B2C supplies are below the registration threshold. Importantly, this approach ensures

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<sup>60</sup> Norway’s customs duty relief threshold only applies to goods where the obligation to collect Norwegian VAT is handled through the country’s simplified compliance regime, i.e. the VAT on E-Commerce (VOEC) scheme. Foodstuffs, goods subject to excise duties and restricted goods are not accepted in the VOEC scheme.

<sup>61</sup> For avoidance of doubt, a compulsory liability to register for VAT under VOEC does not apply to supplies of foodstuffs, goods subject to excise duties and restricted goods. For such goods the customs authorities apply import VAT regardless of the value of the goods and the transitional arrangements do not apply to these goods.

<sup>62</sup> The valuation used by the customs authority when determining whether imported goods are above relevant import *de minimis* thresholds and therefore whether VAT and duties are collected upon the importation of the goods. Generally, this equates to the amount paid by the consumer for the goods, excluding any amounts charged relating to transport and insurance.

that the high volumes of international supplies of low-value goods into Australia and New Zealand do not create customs clearance backlogs at ports, airports and licensed cargo storage facilities.

The United Kingdom<sup>63</sup> introduced reforms that came into force on 1 January 2021. These reforms align to the overall approach of the EU model, applying to imported goods below GBP 135 (USD 105) and utilising a simplified compliance regime for non-resident suppliers and digital platforms. Switzerland<sup>64</sup> has also implemented a collection mechanism for non-resident suppliers. Its approach varies in respect of registration requirements and does not include platforms, although a consultation took place in 2020 on extending the regime to digital platforms.

Subsection 4B.2 provides further analysis about approaches to the reform of low-value consignment relief thresholds for VAT, and the implications of such reforms for customs duty relief thresholds and customs authorities' role in VAT collection and compliance.

### *(i) Similar sub-national consumption tax reforms*

Though not directly analogous to the design of national policy frameworks for VAT collection on international supplies, the Toolkit notes that several sub-national jurisdictions have also implemented changes to apply consumption taxes through registration by non-resident suppliers and including measures equivalent to full liability for digital platforms. In the United States, most states (and in some cases counties and cities) have reacted to the outcome of the *South Dakota v. Wayfair, Inc.* case (Supreme Court of the United States, 2018<sup>[63]</sup>)<sup>65</sup> to reform their sales tax regimes<sup>66</sup> by adopting sales or transaction thresholds for imposition of sales tax collection obligations on remote suppliers and digital platforms selling (or facilitating the sale) of goods and services sold into their states. Similarly, the Canadian province of Québec has reformed the Québec Sales Tax<sup>67</sup> to apply a similar approach. Importantly, two observations can be noted about these approaches:

- These sub-national jurisdictions do not limit tax collection obligations only to suppliers and platforms based within the national jurisdiction but impose them also on non-resident suppliers and digital platforms; and
- These sub-national jurisdictions often apply registration thresholds that provide considerable relief to smaller enterprises (e.g. a threshold of USD 100 000 or 200 transactions in many US states, the

<sup>63</sup> See HM Revenue & Customs (2020), *Changes to VAT treatment of overseas goods sold to customers from 1 January 2021* at <https://www.gov.uk/government/publications/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021>.

<sup>64</sup> See Swiss Federal Tax Administration, *Information on the mail-order regulation as of 1 January 2019* at <https://www.estv.admin.ch/estv/en/home/mehrwertsteuer/fachinformationen/regelung-fuer-den-versandhandel.html>

<sup>65</sup> *South Dakota v. Wayfair, Inc.* 585 U.S. \_\_, 138 S. Ct. 2020 (2018). The case removed the pre-existing constitutional requirement that prohibited states from imposing sales tax collection obligations on remote vendors without a physical presence in the state and substituted an “economic” presence test, reflected in USD sales or transaction thresholds.

<sup>66</sup> US Streamlined Sales Tax Governing Board, *Remote Seller Guidelines* at <https://www.streamlinedsalestax.org/for-businesses/remote-seller-faqs/remote-seller-state-guidance>. The National Conference of State Legislatures has approved Marketplace Facilitator Sales Tax Collection Model Legislation, which reflects the legislation in force in many states, directed at platforms to expand sales tax collection requirements. The model is available at [https://www.ncsl.org/Portals/1/Documents/Taskforces/SALT\\_Model\\_Marketplace\\_Facilitator\\_Legislation.pdf](https://www.ncsl.org/Portals/1/Documents/Taskforces/SALT_Model_Marketplace_Facilitator_Legislation.pdf).

<sup>67</sup> See the reproduced version of the press release on *E-commerce: certain suppliers outside Québec required to collect the QST beginning September 1, 2019* at <https://www.ryan.com/globalassets/canada-articles/revenu-quebec-notice-on-e-commerce.pdf>.

threshold approved in the *Wayfair* case<sup>68</sup>) and are frequently much greater than the equivalent registration threshold for businesses that are resident within the sub-national jurisdiction.

#### **4B.1.5. An overview of the existing VAT and customs regimes for imports of low-value goods in LAC jurisdictions – Scope for reform**

An examination of the LAC region reveals both differences and similarities in current customs and taxation laws for imports of low-value goods. When considering reform to implement the recommended policy framework for VAT collection on imports of low-value goods, LAC jurisdictions will need to determine whether:

- Their current low-value consignment relief thresholds for import VAT and customs duty are (still) appropriate.
- The current VAT registration threshold for domestic businesses would likewise be appropriate for application to non-resident suppliers under a simplified compliance regime. Would it maximise administrative efficiency for customs authorities and provide appropriate simplification and relief from administrative burdens to the smallest non-resident suppliers?

In addressing the first question, tax policymakers will need to clearly define their policy aims and consult with customs authorities and the business community. Each of the two broad approaches to reforming low-value consignment relief thresholds for VAT (threshold or no threshold) has advantages and trade-offs. As noted previously, the Toolkit does not consider customs laws within its scope but will clearly indicate where changes to VAT laws for imports may have consequences for customs authorities and businesses at the time of importation.

The following table provides an indicative overview of current customs duty and import VAT low-value consignment relief thresholds across LAC jurisdictions.

**Table 4B.2. Indicative customs duty and import VAT thresholds for LAC jurisdictions<sup>1</sup>**

| Jurisdiction      | Customs duty<br><i>de minimis</i> | Tax <i>de minimis</i> | Jurisdiction             | Customs duty<br><i>de minimis</i> | Tax <i>de minimis</i> |
|-------------------|-----------------------------------|-----------------------|--------------------------|-----------------------------------|-----------------------|
| Anguilla          | 0.00 XCD                          | 0.00 XCD              | Trinidad and Tobago      | 0.00 TTD                          | 0.00 TTD              |
| Antigua & Barbuda | 0.00 USD                          | 0.00 USD              | Turks and Caicos Islands | 0.00 USD                          | 0.00 USD              |
| Aruba             | 0.00 USD                          | 0.00 USD              | Ecuador <sup>2</sup>     | 10.00 USD                         | 0.00 USD              |
| Bahamas           | 0.00 USD                          | 0.00 USD              | Guinea                   | 15.00 USD                         | 15.00 USD             |
| Barbados          | 0.00 BBD                          | 0.00 BBD              | Grenada                  | 20.00 XCD                         | 0.00 USD              |
| Belize            | 0.00 BZD                          | 0.00 BZD              | Chile                    | 30.00 USD                         | 30.00 USD             |

<sup>68</sup> In *Wayfair*, the United States Supreme Court declared: “Here, the nexus is clearly sufficient based on both the economic and virtual contacts respondents have with the State. The Act applies only to sellers that deliver more than \$100,000 of goods or services into South Dakota or engage in 200 or more separate transactions for the delivery of goods and services into the State on an annual basis. This quantity of business could not have occurred unless the seller availed itself of the substantial privilege of carrying on business in South Dakota.” *South Dakota v. Wayfair, Inc.* 585 U.S. \_\_\_, 138 S. Ct. 2020, 2099 (2018) (citation omitted).

| Jurisdiction        | Customs duty<br><i>de minimis</i> | Tax <i>de minimis</i> | Jurisdiction           | Customs duty<br><i>de minimis</i> | Tax <i>de minimis</i> |
|---------------------|-----------------------------------|-----------------------|------------------------|-----------------------------------|-----------------------|
| Bermuda             | 0.00 BMD                          | 0.00 BMD              | Honduras               | 30.00 USD                         | 30.00 USD             |
| Cayman Islands      | 0.00 USD                          | 0.00 USD              | Argentina <sup>3</sup> | 50.00 USD                         | 50.00 USD             |
| Cuba                | 0.00 USD                          | 0.00 USD              | Brazil                 | 50.00 USD                         | 50.00 USD             |
| Dominica            | 0.00 USD                          | 0.00 USD              | Mexico <sup>4</sup>    | 50.00 USD                         | 50.00 USD             |
| Guyana              | 0.00 USD                          | 0.00 USD              | Costa Rica             | 50.00 USD                         | 50.00 USD             |
| Haiti               | 0.00 USD                          | 0.00 USD              | Curaçao                | 100.00 USD                        | 100.00 USD            |
| Nicaragua           | 0.00 NIO                          | 0.00 NIO              | St. Maarten            | 100.00 USD                        | 0.00 USD              |
| Saint Helena        | 0.00 USD                          | 0.00 USD              | Colombia               | 200.00 USD                        | 200.00 USD            |
| St. Kitts and Nevis | 0.00 USD                          | 0.00 USD              | Dominican Republic     | 200.00 USD                        | 200.00 USD            |
| St. Lucia           | 0.00 USD                          | 0.00 USD              | El Salvador            | 200.00 USD                        | 200.00 USD            |
| St. Vincent         | 0.00 XCD                          | 0.00 XCD              | Peru                   | 200.00 USD                        | 200.00 USD            |
| Suriname            | 0.00 XCD                          | 0.00 XCD              | Guatemala <sup>5</sup> | 500.00 USD                        | 500.00 USD            |

1. Excludes Overseas France (France d'outre-mer)

2. Ecuador: Special import scheme for individuals: Goods below USD 400 and 4kg pay a flat import duty of USD 42 (max 4 imports per year).

3. Argentina: Only apply to non-commercial consignments handled by Argentina's national postal service (Correo Argentino). Limited to 12 consignments per annum. Only benefits individuals.

4. Mexico: USD 117 for US and Canada (USMC Agreement).

5. Guatemala: Limited to once every 6 months.

Source: Zonos, *De minimis values* (Zonos, n.d.<sup>[64]</sup>).

It is apparent that most Caribbean jurisdictions have no relief thresholds for VAT or customs duty, while Latin American jurisdictions either have no or relatively low thresholds. Notable exceptions are Guatemala with relatively high customs duty and VAT thresholds of USD 500 (albeit Guatemala's USD 500 threshold is limited to a single import every six months) and Colombia, Peru, Dominican Republic and El Salvador with USD 200.

Jurisdictions that consider a simplified VAT compliance regime for imports of low-value goods could consider adopting a customs relief threshold at an appropriately high level, specifically for the imports of goods that are sold by non-resident suppliers to private consumers (B2C supplies). The net revenue impact of such a customs relief threshold may be relatively limited, notably taking into account the efficiency gains associated with the tax collection and LAC jurisdictions' decreasing reliance on revenue from customs and import duties, as a consequence of trade liberalisation, and their growing reliance (on average) on revenues from VAT. The jurisdiction adopting the higher threshold could then require non-resident suppliers to collect the VAT on these goods at the time of sale and to remit the VAT in the jurisdiction of importation via a simplified compliance regime. The determination of customs relief thresholds should, however, be carefully considered, notably in light of its impact on government revenues. In this context, it is important to note that transferring the collection of VAT on imports of low-value goods from customs

authorities at the border to non-resident suppliers is a particularly effective tool to address the elevated levels of undervaluation of imported goods that occurs in many jurisdictions. In particular, e-commerce platforms under a full VAT liability model provide a strong probability that jurisdictions will be able to earn VAT revenues on the sales price of the goods rather than on the value that the underlying supplier might otherwise fraudulently declare on a customs declaration. Certainly, e-commerce platforms can assure this more efficiently and readily than transporters or customs authorities.

Jurisdictions should also consider whether they wish to impose an import VAT relief threshold at imported item-level or consignment-level or to completely eliminate such a threshold. If they do have a VAT relief threshold, they could set it at the same level as the customs duty relief threshold to maximise administrative efficiency. This will facilitate the customs process at the time of importation. VAT will then be imposed on the supply of the low-value goods to the customer in the jurisdiction of importation rather than on the importation itself (if the supply is made by a supplier that is subject to an obligation to register for VAT in the jurisdiction of taxation – see next paragraph). The place-of-taxation rule for this supply is determined by reference to the address to which the supplier delivers the goods; see subsection 3B.8. Subsection 4B.2.4 explores this question on determination of VAT and customs duty relief thresholds in further detail.

The related question concerns the appropriateness of extending current domestic VAT registration thresholds to non-resident suppliers. The decision a jurisdiction makes on registration thresholds will directly impact the administrative burdens for customs authorities, tax authorities, transporters and other stakeholders that play key roles in the importation of low-value goods. Subsequent parts of the Toolkit (subsections 4B.2.4 and 4C.1.1) discuss this further, but, in summary, a high VAT registration threshold will potentially eliminate the unnecessary administrative burden on tax authorities to manage VAT registration, returns and payment by many small non-resident businesses for potentially quite small amounts of revenue. Consistency with VAT registration thresholds that apply to domestic businesses will enhance neutrality in the tax treatment of all suppliers.

## 4B.2. Designing the administration for a simplified registration and collection regime for imports of low-value goods

### Guide to subsection 4B.2.

| <b>Section</b> | <b>Theme</b>  | <b>Page</b> |
|----------------|---|-------------|
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As subsection 4B.1.1 explains, there are significant opportunities for jurisdictions to extend the same simplified compliance infrastructure that they use for international B2C supplies of services and intangibles to international B2C supplies of low-value goods.

A significant proportion of the advice in Section 4 of this Toolkit relates to the development of the administrative, operational and IT infrastructure for simplified compliance regimes for non-resident suppliers. Section 4C on administration and Section 4D on operational and IT infrastructure provide guidance on these subjects that applies equally to services, intangibles and low-value goods.

The remainder of Section 4B will therefore focus primarily on important, distinct features of the OECD policy framework that apply specifically to international supplies of low-value goods that do not apply to supplies of services and intangibles. Where relevant, Section 4B highlights the impact of simplified compliance regimes on customs frameworks. Jurisdictions may then wish to consider what additional elements of reform they may need to adopt in order to achieve the most effective operation of a simplified registration and collection regime.

As noted in subsection 4A.1.2, the *Ottawa Taxation Framework Conditions*<sup>69</sup> provide the overarching principles that should inform good tax policymaking, including policies bearing on the collection of VAT on international trade and especially international digital trade. The Forum on Tax Administration's *General Administrative Principles* (OECD, 2001<sup>[56]</sup>) also provide an effective framework to guide implementation at an administrative and operational level, notably in engaging with businesses

This Toolkit recognises approaches that have been endorsed by the WCO and the UPU, and Section 4B refers to this guidance where relevant to the objective of improving VAT collection on imports of low-value goods. Importantly, the analysis in the Toolkit and specifically in Section 4B:

- Does not seek to recommend whether and how jurisdictions should amend customs systems and processes, except insofar as to highlight how reforms to VAT collection may provide an opportunity for customs authorities to reduce operational costs and administrative burdens.
- Does not recommend that jurisdictions utilise a simplified compliance regime for the collection of customs duties, excise taxes, or any other taxes and associated import charges.

If they have not already done so, readers should consult the summary roadmaps for implementation and discussion of project management at subsections 4A.1.2 and 4B.1.2 prior to launching a programme of major reform of their VAT frameworks for international B2C supplies of goods.

#### **4B.2.1. Preliminary considerations for the development of a simplified compliance regime for imports of low-value goods**

Subsection 4A.2.1 sets out preliminary considerations for jurisdictions to consider in the first phase of the development of a simplified compliance regime for non-resident suppliers of services and intangibles. Those considerations also apply in large part to imports of low-value goods. This subsection sets out a number of additional considerations for jurisdictions that wish to extend an existing simplified compliance regime for services and intangibles to imports of low-value goods.

Jurisdictions should consider whether to set a VAT registration threshold. Subsections 4B.2.4 and 4C.1.1 discuss the setting of registration thresholds in greater detail. A jurisdiction may opt to impose a requirement for non-resident suppliers to register and account for their supplies to consumers in that jurisdiction only when they have made sales above a defined materiality threshold. Those jurisdictions are advised to implement one single VAT registration threshold that takes account of the aggregate of all supplies that are within the scope of the registration and collection requirement, whether they are services, intangibles or low-value goods. Supplies on which no VAT is due in any event, because they are exempt or zero-rated, could be excluded from the threshold calculation. This aggregate approach will greatly facilitate the operation of the VAT registration threshold under a regime that applies to sales of low-value goods in addition to supplies of services and intangibles. Many (if not most) non-resident suppliers that are subject to such a regime are likely to make a range of composite supplies. Consumers often purchase both low-value goods and services and intangibles from the same supplier, often in a single transaction. In addition, some purchases of goods can also incur service charges at the point of sale. The operation of separate registration thresholds applied respectively to supplies of low-value goods and to supplies of services and intangibles would lead to unnecessary administrative complexity and revenue leakage.

In addition, non-resident suppliers should be able to submit consolidated VAT returns and make consolidated payments covering all supplies that are subject to a VAT obligation under the simplified compliance regime.

Jurisdictions should consider retaining the traditional, standard VAT registration and collection framework as an alternative for non-resident suppliers. As subsection 4A.2.1 explained, non-resident suppliers sometimes prefer to register under the standard VAT registration regime. This may be attributable to the

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<sup>69</sup> See Guidelines, Paragraph 1.16.

same considerations identified in that subsection, but also because of commercial reasons that are specific to supplies of goods.

For example, certain non-resident suppliers may wish to register under the standard regime to be able to account for VAT on all imports of goods, including high-value goods. These suppliers may, for example, wish to market the handling of all VAT and customs duty formalities as part of their customer service offering, and improve and streamline their own internal systems for managing multi-jurisdictional VAT returns. In these situations, the supplier would take responsibility for importation costs as the importer of record, paying any applicable VAT, customs duties and other customs charges. The supplier would generally be able to recover VAT on these importation costs only if it has a registration under the standard VAT regime.

Subsection 4B.2.7 provides further analysis of policy options for the treatment of high-value goods by non-resident suppliers and digital platforms under the heading '*Optional inclusion of higher-value consignments*'.

#### **4B.2.2. Distinct collection mechanisms and administration depending on customer status – B2C and B2B supplies**

##### **(i) Business-to-consumer (B2C) supplies**

Section 3 of the Toolkit (notably subsection 3A.3) explains the rationale for why simplified compliance regimes are presented primarily as a solution for the collection of VAT on B2C supplies by non-resident suppliers. Subsections 4A.1.1, 4A.2.1 and 4A.2.2 provide a summary of this rationale. The Toolkit does recognise, however, that a VAT regime may not distinguish between B2C and B2B supplies and that jurisdictions could then consider applying a simplified compliance regime to both B2C and B2B supplies.

##### **(ii) Business-to-business (B2B) supplies**

Subsections 3A.2 and 3A.3 of the Toolkit present a detailed rationale for the recommendation that jurisdictions implement a reverse charge mechanism for the collection of VAT on B2B supplies by a non-resident supplier, where this is compatible with the jurisdiction's VAT framework, in particular for supplies of services and intangibles. Subsection 3B.9 explains that this approach could apply equally to international B2B supplies of goods. This subsection and subsection 4A.2.2 provide further guidance on the implementation of reverse charges from an administrative and operational perspective.

Reverse charge or analogous mechanisms provide significant cash flow relief to domestic business customers and equally significant administrative relief to non-resident suppliers, especially because most business customers are likely to have the right to recover input VAT on the majority of importations of goods. In practice, however, it may be difficult for customs authorities to distinguish a business customer from a private consumer in respect of an imported good when they must make that determination on the basis of the information available on a simplified customs declaration. This makes the operation of a reverse charge operationally more challenging for low-value goods, and it could lead to cases of double taxation if VAT is collected both by customs authorities at the border and through the reverse charge mechanism by the business customer. For larger domestic businesses that import predominantly higher value goods or bulk consignments, mechanisms analogous to a reverse charge such as "postponed accounting" schemes can provide similar reliefs. For smaller businesses, however, it may be more difficult to access these mechanisms.

**Avoiding double taxation when VAT on B2B supplies has inadvertently been collected by the non-resident supplier under a simplified compliance regime.** Where a simplified compliance regime applies only to B2C supplies, a non-resident supplier may inadvertently treat a business customer as a private consumer and collect the VAT on the supply. This can lead to double taxation, for instance when VAT is

collected on that same supply by customs authorities at the border or when the supply is subject to a reverse charge obligation. Subsection 4A.2.2 observes that jurisdictions may wish to consider allowing recovery of input VAT by domestic businesses in such cases without requiring them to hold a VAT/tax invoice. Some LAC jurisdictions (e.g. Costa Rica, Chile) allow a domestic business to recover input VAT (or to claim a “fiscal credit”) on the basis of the proof of payment that the customs authority issues upon importation. Jurisdictions could adapt this principle to encompass the receipt or proof of payment issued by a non-resident supplier under a simplified compliance regime.

Alternatively, jurisdictions could authorise a non-resident supplier to issue a VAT/tax invoice for an international B2B supply of low-value goods when the domestic business customer informs the supplier that it has incorrectly charged VAT. This could enable the business customer to recover the input VAT on its VAT return rather than demanding a refund of the VAT from the non-resident supplier.

For example, New Zealand<sup>70</sup> allows non-resident suppliers to issue a tax invoice up to a value of NZD 1 000 (excluding the amount of GST due on the sale) if a supplier has inadvertently charged GST on a B2B supply, rather than requiring the supplier to refund the incorrectly charged GST in all cases. In addition, New Zealand provides a simplification to enable a non-resident supplier to charge GST on a supply of low-value goods to a GST-registered business customer and proactively issue the customer with a tax invoice under specific conditions. This applies when:

- The value of the supply (excluding GST) is NZD 1 000 (USD 648) or less; and
- The supplier reasonably expects that, in the 12 months after it makes the supply, more than 50% of its supplies to customers in New Zealand will be to persons that are not registered for GST.

In practice, this approach relieves suppliers of distinguishing between B2C and B2B supplies of low-value goods. Additionally, a non-resident supplier that charges GST to a GST-registered business under this rule is able to issue a single document that qualifies both as a full tax invoice and a receipt that the customer can provide to New Zealand Customs to prevent double taxation. The supplier must ensure that the documentation it issues meets the requirements of New Zealand laws and regulations for tax invoices and receipts.

#### **4B.2.3. Specific considerations for determining the scope of the simplified compliance regime for imports of low-value goods**

As outlined in subsections 4B.1 and 4B.2.1, simplified compliance regimes for imports of low-value goods are aimed primarily at imports of goods below the customs duty relief threshold that are supplied by non-resident suppliers to consumers. This subsection describes a number of specific concerns for jurisdictions to consider when determining the scope of a simplified compliance regime for imports of low-value goods.

- **The starting assumption is that VAT is imposed on low-value goods within the scope of the simplified compliance regime on the same basis as domestically supplied goods.** VAT laws should clearly define which imports are in scope of the simplified compliance regime. These are in principle imports of low-value goods below the customs duty low-value consignment relief threshold, which are sold by non-resident suppliers to private consumers in the jurisdiction of importation. VAT should be imposed on these imported items in the same way as they apply to domestic supplies, including the same rates for goods of the same nature.
- **It is recommended that jurisdictions exclude low-value goods to which excise duties apply (e.g. alcohol, tobacco, perfume and other types of products).** It may be simpler for customs authorities to continue to collect VAT on excisable goods.

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<sup>70</sup> See relevant guide provided in New Zealand Inland Revenue website – *When GST has been charged twice at* <https://www.ird.govt.nz/gst/gst-for-overseas-businesses/gst-on-low-value-imported-goods/when-gst-has-been-charged-twice>.

- **Jurisdictions that consider implementing a simplified compliance regime for imports of low-value goods will normally review their current low-value consignment relief thresholds and consider whether these are set at the right level to achieve maximum economic benefit.** Where jurisdictions have a very low or zero customs duty relief threshold, there may be a case for them to review and increase it to maximise the administrative and revenue benefits of a simplified compliance regime. For similar reasons, jurisdictions may also wish to evaluate the effectiveness of their VAT low-value consignment relief threshold against overall objectives for VAT collection. The following subsection discusses the options for reforming relief thresholds in more detail.
- **Ensure that valuation of goods under simplified compliance regimes aligns appropriately with customs laws.**
  - Jurisdictions should provide clear guidance to non-resident suppliers on the valuation methodology for determining whether a supply is of a low-value or a higher-value good. Lack of alignment or lack of clarity on this issue creates substantial risks of double taxation and non-taxation. A proper approach requires alignment of the VAT valuation criteria with the valuation criteria that customs authorities use in assessing imports against the customs duty relief threshold.
    - Customs authorities will generally use the “customs value” of goods to determine whether VAT and customs duties should apply at importation. This value is usually exclusive of transport, insurance, import duties, taxes and other charges.
  - Laws for collection of VAT by customs authorities will often refer to goods at a customs value either “*below*” or “*at or below*” the customs duty low-value consignment relief threshold (“*de minimis*”). A simplified compliance regime will normally apply to the imports of low-value goods below the customs duty low-value consignment relief threshold. It will transfer the responsibility to collect and remit the VAT on these goods from the customs authorities to the non-resident supplier. To ensure consistency between the VAT and the customs process, jurisdictions should ensure careful alignment of terminology between customs laws and the VAT laws that impose a collection obligation on non-resident suppliers.

**For example:**

- If a jurisdiction sets its customs duty relief threshold to apply to goods with a value below USD 100, then laws imposing VAT collection responsibilities on non-resident suppliers should likewise apply only to goods below USD 100. In this scenario, goods of a value of USD 100 would be higher-value goods and customs authorities would remain legally responsible for VAT collection. If the jurisdiction does not clearly communicate to non-resident suppliers in its laws and guidance that they should not collect VAT on goods of USD 100 (and above) then there is a risk of double taxation.
- If the jurisdiction sets the customs duty relief threshold to apply to goods at or below USD 100, then goods of a value of USD 100 would be low-value and subject to non-resident suppliers’ collection responsibilities. If the jurisdiction does not clearly communicate to non-resident suppliers that they should collect VAT on goods of USD 100 (and below) then there is an unintentional non-taxation risk.
- **It needs to be clarified, however, that non-resident suppliers should use the specified valuation methodology only for determining if goods are low-value and thus whether or not they are subject to the simplified compliance regime.** This valuation methodology does not determine the tax base for the calculation of VAT due on the supply, which the non-resident supplier must determine at the point of sale. This tax base for VAT normally includes the full value of the supply including transport and insurance costs. Subsections 4B.2.5 to 4B.2.7 elaborate further on considerations for designing rules to determine the customs value of goods at the point of sale.

#### 4B.2.4. Determining low-value consignment relief thresholds for VAT and customs duty

Subsection 3B.7 presented two broad policy options for jurisdictions to consider when determining low-value consignment relief thresholds for import VAT and customs duty, in the context of the implementation of a simplified compliance regime for the collection of VAT on imports of low-value goods. Subsection 3B.7 referred to these options as the “No VAT thresholds” approach and the “VAT registration and transactional thresholds” approach respectively.

In practice, jurisdictions have taken a number of different approaches when implementing new policy frameworks for VAT collection on imports of low-value goods. Each jurisdiction will need to decide on the approach it wishes to adopt in light of its existing VAT and customs framework and its policy objectives. Maintaining of the status quo is also an option for jurisdictions in respect of either or both the VAT and customs duty relief thresholds. The following passages and table summarise the decisions that different jurisdictions have taken on the issue.

- Removing the low-value consignment relief threshold for VAT.
  - **Both the European Union and Norway**<sup>71</sup> have taken this approach. VAT applies to all imports under this model. Under this approach, customs authorities will collect import VAT on all imports of goods above the customs duty relief threshold, while non-resident suppliers will either have a voluntary option (European Union) or compulsory obligation (Norway) to collect VAT at the time of supply on goods below the threshold. Customs authorities, with support from transporter businesses, will collect import VAT if the non-resident supplier does not collect VAT at the time of supply. The advantage of this model is that it creates the largest potential tax base for VAT collection on imports and can address political pressures from domestic VAT-registered businesses to remove any potential advantages for non-resident suppliers. However, a larger tax base and high absolute revenues may not necessarily result in higher net revenues compared to other approaches.
  - If a non-resident supplier supplies low-value goods to private consumers in the jurisdiction of importation without registering for VAT under the simplified compliance regime, then customs authorities remain involved in the collection of the VAT on the importation of these low-value goods to prevent non-taxation. For example, under the EU model customs authorities will require express carriers and postal operators to collect the VAT from private customers for goods below the EU customs duty threshold of EUR 150 (USD 171) if the non-resident supplier has not accounted for it or the customer did not import the goods in their own name.
  - The European Union has decided that it will maintain its customs duty relief threshold at its current level of EUR 150 following the entry into force of its simplified compliance regime for non-resident suppliers of low-value goods in July 2021. By contrast, the Norwegian tax and customs authorities used the introduction of a simplified compliance regime as an opportunity to significantly revalue the country’s customs duty relief threshold. As a simplification measure, Norway raised this threshold almost ten-fold from NOK 350 (USD 37) to NOK 3 000 (USD 318) for goods that fall within its simplified compliance regime. The benefit of this upward valuation of the customs duty relief threshold is that it reduces the administrative costs and burdens for both suppliers and customs authorities of navigating complex customs duty regulations for relatively lower-value consignments. The purpose is to contribute to high levels of compliance

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<sup>71</sup> Although Norway’s law removed its import VAT *de minimis*, transitional arrangements in place provide that customs authorities will not check imports of goods with a value below NOK 350 for fiscal purposes during the transitional period, except where they are imports of foodstuffs, goods subject to excise duties and restricted goods. See Norwegian Tax Administration, *VAT on low value imported goods* at <https://www.skatteetaten.no/en/business-and-organisation/vat-and-duties/vat/foreign/e-commerce-voec/low-value/>.

by non-resident suppliers and digital platforms under the simplified compliance regime and to maximise the VAT revenues that they will collect.

- Maintaining the current relief thresholds for VAT and customs duty at a high level.
  - **Australia:** When implementing GST collection responsibilities for non-resident suppliers of low-value goods, Australia maintained its import GST and duty thresholds at AUD 1 000 (USD 688), which is also the threshold for full import declaration requirements. These relatively high relief thresholds have similar benefits to the Norwegian customs duty threshold post-revaluation. To further facilitate administrative efficiency and the smooth flow of goods at the border, Australia also set a revenue-based registration threshold for non-resident suppliers at the same level as its domestic registration threshold (AUD 75 000/nearly USD 52 000).
  - Under this model, non-resident suppliers with taxable revenues above the registration threshold must register for and collect GST on all B2C supplies of goods to Australian consumers with a value at or below AUD 1 000. Customs authorities will not collect GST on any goods at or below AUD 1 000 except for certain exclusions from suppliers' collection obligations such as goods to which excise duties apply.
  - The presumption is that all imports of goods below AUD 1 000 come from suppliers that have collected VAT at the time of supply or are legitimately VAT-free because the supplier does not meet the registration threshold. The tax authority takes appropriate enforcement measures to identify and address instances of non-compliance by non-resident suppliers of low-value goods that should have registered.
- Raising the relief thresholds for VAT and customs duty.
  - **New Zealand:** New Zealand raised both VAT and customs duty relief thresholds significantly from a previous upper limit of NZD 400 (USD 259) to NZD 1 000 (USD 648). Like Australia, it also applies a revenue-based registration threshold to non-resident suppliers of NZD 60 000 (nearly USD 39 000). The model functions in largely the same way as Australia's and the rationale and benefits are similar.

The table below summarises the policy choices in respect of low-value relief thresholds made by selected jurisdictions that have imposed VAT collection obligations on non-resident suppliers of low-value goods.

**Table 4B.3. Selected jurisdictions' import relief (*de minimis*) and full customs declaration relief thresholds prior to and after VAT reform for imports of low-value goods**

| Import threshold value by type <u>before</u> implementation |                              |                                |                          |
|---|------------------------------|--------------------------------|--------------------------|
| Jurisdiction  | Import VAT <i>de minimis</i> | Customs duty <i>de minimis</i> | Full customs declaration |
| Australia   | AUD 1 000                    | AUD 1 000                      | Above AUD 1 000          |
| European Union  | EUR 10 – 22                  | EUR 150                        | Above EUR 150            |
| New Zealand   | NZD 229 – 400 <sup>1</sup>   | NZD 229 – 400 <sup>1</sup>     | NZD 1 000                |
| Norway  | NOK 350                      | NOK 350                        | Above NOK 350            |
| Import threshold value by type <u>after</u> implementation  |                              |                                |                          |
| Jurisdiction  | Import VAT <i>de minimis</i> | Customs duty <i>de minimis</i> | Full customs declaration |
| Australia   | AUD 1 000                    | AUD 1000                       | AUD 1 000                |
| European Union  | EUR 0 <sup>2</sup>           | EUR 150 <sup>2</sup>           | EUR 150 <sup>2</sup>     |

|                    |           |           |                        |
|--------------------|-----------|-----------|------------------------|
| <b>New Zealand</b> | NZD 1 000 | NZD 1 000 | NZD 1 000 <sup>3</sup> |
| <b>Norway</b>      | NOK 0     | NOK 3 000 | NOK 3 000 <sup>4</sup> |

1. New Zealand's previous *de minimis* (for both import GST and duty) was applied only when the total to be paid by the importer exceeded NZD 60, which meant that this could span a range of values depending on whether duty, VAT or both were applicable.

2. These values apply from 1 July 2021, the effective date of the new EU regime for VAT collection on low-value B2C imported goods.

3. Inward Cargo Report requires a mandatory tariff code for each item in the consignment if the consignment value is greater than NZD 400, up to NZD 1 000.

4. A full customs declaration must be lodged for foodstuffs, goods subject to excise duties and restricted goods below NOK 3 000.

Source: OECD research.

The table above also notes the level at which importers must provide full customs reporting<sup>72</sup>. As the table shows, these jurisdictions generally require full customs declarations only for goods of a value either at or above the level of the customs duty low-value relief threshold. Subsection 4B.3 considers optimal approaches to customs reporting and procedures to enable fast-track clearance of goods through simplified clearance procedures, in particular where suppliers have already collected VAT at the time of supply.

The remainder of this subsection examines a number of additional considerations bearing on jurisdictions' decision making in respect of low-value consignment relief thresholds when designing a simplified compliance regime for imports of low-value goods. It first considers the question whether to maintain a low-value consignment relief threshold for VAT or, alternatively, to abolish the relief threshold for VAT and maintain only a customs duty relief threshold. It then considers the determination of the appropriate level at which to set the customs duty relief threshold, which is normally the level below which non-resident suppliers will be required to collect and remit the VAT in the jurisdiction of importation under the simplified compliance regime.

- **Considerations for jurisdictions in determining whether or not to operate a low-value consignment relief threshold for VAT**

Some jurisdictions may feel compelled to abolish their VAT relief threshold both to maximise the tax base and to address competitive pressures on domestic suppliers. This may be more achievable for well-resourced tax and customs administrations in large jurisdictions than in smaller ones. Other jurisdictions may find that complete removal of the VAT low-value consignment relief threshold may be too costly, because of the burdens it places on customs authorities and other stakeholders such as transporters to continue administering the VAT collection for all goods on which non-resident suppliers do not collect VAT at the time of supply. Subsection 4B.3 provides further analysis of how jurisdictions can enhance efficiency of VAT collection under systems in which no import VAT relief threshold applies.

Jurisdictions that decide to maintain a VAT low-value consignment relief threshold may wish to consider setting that threshold at the same level as the customs duty relief threshold. Goods with a customs value below these thresholds that are subject to the simplified compliance regime for non-resident suppliers are then in principle relieved from both VAT and customs duty collection at the border. The VAT on these goods is then collected by the non-resident suppliers at the time of supply (the point of sale) of these goods to final consumers in the jurisdiction of importation. A jurisdiction may decide to apply a VAT registration threshold for these non-resident suppliers at the same level as for domestic suppliers. Such a

<sup>72</sup> The provision of information for formal import clearance of imported goods, including the assessment of customs duty and VAT, by customs authorities for which they normally apply a processing fee. The document that suppliers lodge for this process is known as a "Customs Import Declaration" in the European Union, an "Import Entry" in the United States and an "Important Declaration" in other countries.

harmonisation of thresholds enhances simplicity for customs administrations as well as for suppliers and customers.

- **Considerations for jurisdictions in determining the level of the customs duty relief threshold**

The next question relates to the optimal level at which to set the *customs duty* low-value relief threshold. This is relevant under both the “No VAT thresholds” and “VAT registration and transactional thresholds” approaches to reliefs, as a simplified compliance regime for non-resident suppliers of low-value goods applies in principle only to the VAT collection on imported goods below the customs relief threshold. Setting an appropriate customs duty relief threshold will normally require modelling of the effects of different threshold levels based on information on the volumes and values of low-value goods entering the jurisdictions’ territory.

A low customs duty relief threshold is likely to create complexity for compliance and administration as consignments may more frequently involve goods that are both above and below the threshold. Such complexities could arise, for example, if jurisdictions have specific rules for a consignment containing multiple low-value goods that in combination exceed the customs duty *low-value relief threshold*. Currency exchange rate fluctuations can create further challenges for determining the value of goods against a relief threshold, particularly when the relief threshold is set at a relatively low level.

When carrying out the analysis for the determination of the customs relief threshold in light of the operation of a simplified VAT compliance regime for imports of low-value goods, jurisdictions are advised consider the following aspects:

- Work with customs authorities and other relevant authorities to:
  - Review the customs records that cargo operators (including express carriers) and postal operators report to analyse the flow of goods by volume and value range, e.g. USD<sup>73</sup> 0-100, 101-200, 201–300, etc. The analysis should split the data into private consumer and business imports. Note that these data may contain only the value of whole consignments and not the individual goods within them; and
  - Undertake sampling to determine the average declared customs value for goods in different value ranges. This may be more relevant in situations where suppliers and transporters do not routinely report through full customs declarations, e.g. imports through the post.
  - Review specific consignments as part of the analysis in order to test the accuracy of customs declarations within different value ranges and for particular types of products to reveal the scale of undervaluation fraud.
- Work with economic forecasters and/or third-party financial data providers to:
  - Identify current and historical average spending patterns among domestic consumers on goods purchased abroad.
  - Identify trends or predicted changes in consumers’ spending patterns, particularly in light of digital trade growth (e.g. any trends indicating increasing consumer spending on higher-value goods). Setting a customs duty (and import VAT) *de minimis* based on historical and current spending patterns without assessing future trends may affect the longer-term efficiency of a policy framework and the revenues it generates.
  - Understand any significant inflationary trends for major trading partners where relevant.
- Work with their central bank and/or other relevant financial authority to understand any trends and historic variability in the jurisdiction’s currency against those of major trading partners.

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<sup>73</sup> USD used for indicative purposes only.

- Engage with e-commerce platforms and large online suppliers to understand what low-value consignment relief threshold level would be most effective and efficient for them from an operational perspective.

#### **4B.2.5. VAT treatment of multiple low-value goods in a single consignment**

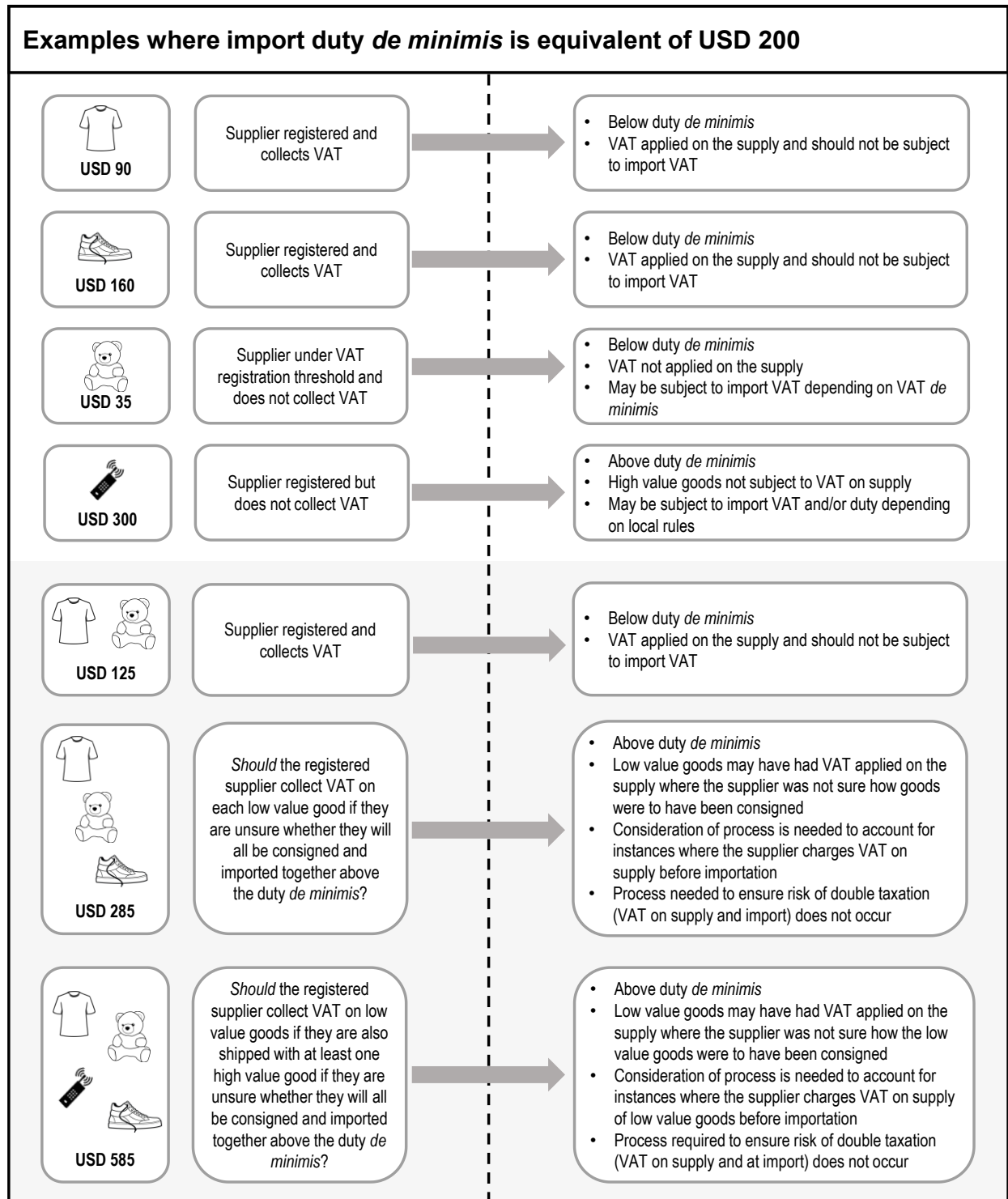
The jurisdictions that have introduced reforms to transfer the VAT liability for imports of low-value goods to non-resident suppliers have limited those obligations for non-resident suppliers only to goods below the customs duty low-value consignment relief threshold. VAT on the importation of consignments above that customs duty threshold continues to be collected by the customs authorities. In practice, determining whether a consignment containing low-value goods is below or above the customs duty low-value consignment relief threshold can be challenging in a number of circumstances, in particular:

- Where a supplier sells multiple low-value goods and transports them together in a single consignment to the jurisdiction of importation, which results in that consignment having an aggregate value above the customs duty relief threshold. The supplier may not always be aware that this is the case, for instance when packaging and transportation is arranged by a third-party services provider.
- Where one or more high-value goods form part of a single consignment of low-value goods that may therefore collectively exceed the customs duty relief threshold upon importation.

Jurisdictions must establish rules that clearly set out the VAT collection responsibilities of non-resident suppliers and customs authorities in these scenarios. How a jurisdiction decides to address these types of scenarios may impact the customs clearance processes for imports of low-value goods.

Figure 4B.2. below provides an illustrative overview of key issues to consider in this regard.

Figure 4B.2. Illustrative examples of how different types of consignment affect policy frameworks that impose VAT collection responsibilities for low-value goods on non-resident suppliers



Source: OECD analysis.

Jurisdictions have taken the following approaches to address the issue of how to appropriately treat multiple low-value goods that are presented in a single consignment at importation:

- **The “item-level” approach:** Australia and Norway take this approach by default and New Zealand considers taking this approach in some cases. In practice, this means that non-resident suppliers should collect VAT on any good under the customs duty low-value relief threshold irrespective of how these low-value goods are packaged for transportation.
- **The “high-value consignment exception” approach:** Australia takes this approach in limited cases. This approach allows non-resident suppliers not to apply VAT at the time of the supply. However, they can do so only where they have a reasonable belief that the low-value goods they have sold will be transported to the jurisdiction of importation in one consignment with a total customs value exceeding the customs duty *low-value consignment relief threshold*. As a result, customs authorities will apply import VAT, duties and any charges upon importation of the consignment. For example, under the Australian approach, suppliers need to take reasonable steps to obtain information about whether or not Australian customs authorities would consider the goods to comprise a taxable importation (i.e. part of a consignment with a value above the customs duty relief threshold) (Australian Taxation Office, 2018<sup>[65]</sup>). After taking these steps, the supplier must have a reasonable belief that the goods will form part of a taxable importation. In the case of Australia, because its customs duty *low-value consignment relief threshold* is relatively high at AUD 1 000 (USD 688), the incidence rate of suppliers with possible cause to apply the exception is relatively low. When non-resident suppliers are uncertain how goods will be transported, they must apply VAT on the supply of all low-value goods they sell.
- **The “split value” approach:** This is the standard approach taken by Norway. It applies where a supply of multiple goods contains both low-value goods and other goods with a value above the NOK 3 000 (USD 318) customs duty threshold, or one or more goods that are outside the scope of the Norwegian simplified VAT compliance regime (e.g. foodstuffs or restricted goods). In practice, it means that suppliers have to split the consignment into separate consignments to avoid full customs declarations on the low-value goods component of the order.

Under all of these approaches, it is essential that customs processes recognise the distinction between goods on which suppliers have collected VAT on at the time of supply and those on which they have not collected VAT. Subsection 4B.3 provides further advice on development of these processes.

#### **4B.2.6. Potential expression of relief thresholds in a reserve currency or a major trading partner’s currency**

Jurisdictions could express their VAT and/or customs duty low-value consignment relief thresholds in a reserve currency or major trading partner’s currency to provide additional certainty. This approach may be more relevant for small jurisdictions or those with a very volatile domestic currency. In this regard, of course, it is useful for tax policymakers and administrators to bear in mind that non-resident suppliers:

- Will not always set the price of the sold goods in the currency of the jurisdiction to which they are transported.
- Will not always transact (i.e. settle customer payments) in the currency of the jurisdiction to which they will transport the goods; and
- Would need to continuously update the exchange rates in their business systems to determine the appropriate VAT treatment of goods that they sell and transport to jurisdictions whose VAT and/or customs duty relief thresholds are denominated in a currency other than the supplier’s own principal currency for conducting its business. Suppliers would therefore need ready access to accurate exchange rates that reflect real-time values. Obtaining this information could be difficult with respect to currencies that businesses do not normally use in global markets. Without access to accurate rates, the risk of systematic double taxation or non-taxation increases significantly if the exchange rate used by the supplier at the time of sale is consistently and materially different from that used by the customs authority when the goods are cleared.

Some LAC jurisdictions already operate a customs duty and import VAT *de minimis* based on USD (see Table 4B.2 at subsection 4B.1.5). Jurisdictions that do not currently take such an approach may wish to consider the merits and drawbacks of doing so, including the potential impacts on wider customs laws and processes.

#### **4B.2.7. Optional inclusion of higher-value consignments**

Jurisdictions could consider providing non-resident suppliers the option of also collecting the VAT on higher-value goods under the operation of the simplified compliance regime for imports of low-value goods, under certain circumstances. New Zealand has implemented such rules, subject to the following specific requirements:

- Non-resident suppliers of low-value goods may elect to charge GST on goods valued above NZD 1 000 (USD 648) (“high-value goods”) if those goods are supplied to consumers in New Zealand. The option is available if low-value goods are likely to comprise at least 75% of the total value of goods that a supplier makes to consumers in New Zealand. The reference period for this 75% test is the 12-month period starting on the date the supplier opts for collecting GST on higher-value goods.
- Alternatively, a supplier will be able to charge GST on its supplies of high-value goods to consumers if the Commissioner of Inland Revenue considers that allowing the supplier to do so will not result in a risk to the integrity of the tax system.

The motivation for this approach is to avoid compliance costs for suppliers from having to distinguish between sales of low- and high-value goods at the point of sale. Suppliers can accordingly elect to collect VAT on high-value goods in situations where the compliance costs of distinguishing between low- and high-value goods would be disproportionate to any revenue risk from failing to distinguish between such goods. This would, for example, apply where the total value of the supplier’s sales of high-value goods to consumers is relatively low, or where the supplier has a good tax compliance history.

#### **4B.2.8. Supplies of goods by non-resident suppliers under the “Fulfilment House” model**

The dynamic nature of the international online B2C trade in goods has incentivised the emergence of new business models. As subsection 3B.5.1 described, these have included the development of just-in-time fulfilment models that allow non-resident suppliers to better meet domestic consumer expectations of guaranteed same-day or next-day delivery. As a result, there has been a rise in the number of “fulfilment house” businesses, some of which digital platforms maintain as part of their overall service offering for online sales of goods, while independent businesses run many other fulfilment houses. A fulfilment house business provides non-resident suppliers with the means to import goods in bulk into a jurisdiction and store them in domestic warehouses prior to sale. When a consumer makes an order, the fulfilment house operator or the supplier can then arrange for rapid dispatch of the goods according to a delivery schedule that is as fast as, if not faster, than what a domestic business would be able to provide. Typically, these are not the same as “bonded warehouses”, which are often subject to different customs clearance processes.

Jurisdictions have increasingly been confronted with VAT fraud by non-resident businesses that use the services of fulfilment houses to store goods in a jurisdiction in which they sell the goods to consumers without accounting for the VAT on such sales. The fulfilment house model came under particular scrutiny in certain jurisdictions in recent years due to evidence of widespread VAT fraud and undervaluation of

imports by suppliers that utilise fulfilment houses, e.g. UK National Audit Office investigation and review.<sup>74</sup> Jurisdictions such as the United Kingdoms<sup>75,76</sup> have therefore taken targeted measures to impose stronger sanctions and penalties either on non-compliant, non-resident sellers or on the fulfilment house businesses that facilitate their supplies.

The VAT full liability regime for digital platforms in respect of imports of low-value goods provides a powerful tool to address fraud under the fulfilment house model. This objective can be achieved by extending the full liability for digital platforms to account for the VAT on supplies of imported low-value goods by non-resident suppliers through their platform to include sales made through fulfilment houses (see subsection 3B.5). The European Union adopts this approach as of 1 July 2021 and the United Kingdom introduced the same approach as of 1 January 2021.<sup>77</sup>

These approaches broadly align with the approach in New Zealand, where rules for full GST liability for digital platforms treat the platforms as the supplier for all supplies of low-value goods that they facilitate for non-resident suppliers. Full liability applies regardless of whether the underlying supplier stores the goods in New Zealand or in a foreign jurisdiction at the time of supply. Full liability applies to all goods with a value of NZD 1 000 (USD 648) or less that a non-resident supplier supplies to a New Zealand delivery address. The table below provides a summary of the differences between the GST rules applied to supplies of low-value goods and remote services that digital platforms facilitate for non-resident suppliers, both as they were before and after the introduction of the simplified compliance regime for imports of low-value goods in New Zealand (December 2019).

**Table 4B.4. New Zealand GST on supplies by non-resident suppliers through digital platforms – Pre- and post-December 2019**

|                           | Remote services and intangibles to NZ consumers        | Low-value goods in NZ at time of supply                      | Low-value goods outside NZ at time of supply                 |
|---------------------------|--|--|--|
| <b>Previous treatment</b> | Marketplace operator was the supplier for GST purposes | Merchant was responsible for GST                             | Supply not subject to GST                                    |
| <b>New treatment</b>      | No change  | <b>Marketplace operator is the supplier for GST purposes</b> | <b>Marketplace operator is the supplier for GST purposes</b> |

Source: New Zealand Inland Revenue Service.

Compliant non-resident suppliers that make supplies through the fulfilment house model, will normally incur import VAT when importing the goods into the jurisdiction in bulk for storage purposes. Jurisdictions are encouraged to allow such suppliers to register for VAT under the standard regime and thus allow them to

<sup>74</sup> See the UK National Audit Office's 2017 report on *Investigation into overseas sellers failing to charge VAT on online sales* at <https://www.nao.org.uk/report/investigation-into-overseas-sellers-failing-to-charge-vat-on-online-sales/>.

<sup>75</sup> See the UK Government's guidance on *Apply for the Fulfilment House Due Diligence Scheme* at <https://www.gov.uk/guidance/fulfilment-house-due-diligence-scheme>.

<sup>76</sup> See HM Revenue & Customs' guidance on *Tackling online VAT fraud and error – the role of online marketplaces in co-operating with HMRC (The agreement)* at <https://www.gov.uk/government/publications/hmrc-and-online-marketplaces-agreement-to-promote-vat-compliance/tackling-online-vat-fraud-and-error-the-role-of-online-marketplaces-in-co-operating-with-hmrc-the-agreement>.

<sup>77</sup> See HM Revenue & Customs' 2020 policy paper on *Changes to VAT treatment of overseas goods sold to customers from 1 January 2021* at <https://www.gov.uk/government/publications/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021>.

recover the import VAT as input VAT on their returns, or provide another simple-to-use refund mechanism. This will help to minimise cash-flow costs for non-resident suppliers and reduce risks of double taxation. See subsection 4B.3 below for further explanation.

In general, extension of the full VAT liability regime for digital platforms to cover goods that underlying non-resident suppliers make through fulfilment houses can represent a significant simplification for both suppliers themselves and digital platforms. It removes the complexity for digital platforms of determining the location of goods at the time of supply and provides stronger safeguards against VAT fraud and non-compliance. Simplification benefits would be of an especially high level in this context if jurisdictions could further simplify VAT registration and compliance obligations for non-resident suppliers using fulfilment houses without impeding input VAT recovery. Please see subsection 4C.1.6 for an analysis of options for input VAT recovery under simplified compliance regimes.

### 4B.3. Minimising risks of double taxation and unintentional non-taxation of imports of low-value goods

#### Guide to subsection 4B.3.

| <i>Section</i> | <i>Theme</i>  | <i>Page</i> |
|----------------|---|-------------|
| 4B.3.1.        | <i>Risks of double taxation and unintentional non-taxation</i>  | 200         |
| 4B.3.2.        | <i>Minimising risks of double taxation and unintentional non-taxation through reporting and data exchange</i> | 202         |
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| 4B.3.5.        | <i>Data sharing between customs authorities and tax authorities</i>   | 206         |
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This subsection considers the introduction of information reporting requirements and data sharing approaches to support tax and customs authorities' strategies to minimise risks of double taxation and under-taxation or unintentional non-taxation under a simplified compliance regime for imports of low-value goods.

It first outlines key risks and causes of possible double taxation and unintentional non-taxation or under-taxation. It then explores possible approaches and available tools for data collection and data sharing to support tax and customs authorities risk management strategies, including data sharing between the jurisdiction's tax and customs authorities in the jurisdiction of taxation.

#### **4B.3.1. Risks of double taxation and unintentional non-taxation**

The main risks of double taxation under a simplified compliance regime for imports of low-value goods relates to situations in which a non-resident supplier collects VAT at the time of supply while customs authorities also assess and collect import VAT on these goods at importation. This can follow from errors

in determining the appropriate VAT treatment by either the supplier or customs authorities. Alignment of policies, laws and procedures for the division of VAT collection responsibilities between different parties will mitigate this risk. Decisions at the policy design stage can in particular affect a jurisdiction's exposure to double taxation risks, including in respect of the aspects outlined below.

- **Import VAT low-value consignment relief threshold.** Abolishing import VAT low-value consignment relief creates a necessity for customs authorities, and other relevant actors in the customs process such as transporters, to verify whether non-resident suppliers have collected VAT at the time of supply for consignments below the customs duty relief threshold. If the supplier has not collected VAT, then customs authorities will assess and collect VAT at importation. A lack of a robust verification process or any flaws in such a process may lead to a higher risk of double taxation due to customs authorities' determination to collect VAT in the absence of clear information on the VAT settlement status of the goods at the time of importation.
- **Customs duty relief thresholds.** The level of the customs duty relief threshold directly affects the proportion of imported low-value goods on which non-resident suppliers must collect VAT at the time of supply. The lower the proportion of goods with a value close to the customs duty relief threshold, the lower the potential for incidences of double taxation due to errors by either suppliers or customs authorities or because of different approaches to conversion of foreign currencies (e.g. different sources of exchange rates or methodologies for determining the time and date on which to base currency version).
- **Rules for the treatment of consignments containing multiple goods.** Consumers often purchase more than one good in a transaction, which suppliers package and collectively consign to the jurisdiction of destination. Such packages could contain a low-value good and a high-value good or, alternatively, two or more low-value goods that together have a value above the customs duty relief threshold. Jurisdictions must provide certainty to both customs authorities and suppliers on how to treat such consignments to prevent double taxation as a result of both parties electing to collect VAT on the same goods. All other relevant parties to the transaction and delivery of the goods, such as transporters and/or digital platforms, should understand their obligations and their reporting requirements.
- **Supplies of goods under the domestic fulfilment house model.** As explained at subsection 4B.2.8, compliant non-resident suppliers that make B2C supplies of goods through fulfilment houses could face effective double taxation if they are unable to recover the VAT paid at the time of importation of the goods that are stored in the fulfilment house. This is because they will account for the VAT again selling the goods to consumers in that jurisdiction. Jurisdictions can facilitate recovery of the import VAT either through permitting registration under the standard VAT regime or an alternative refund mechanism.

In addition to double taxation risks, there is also a potential for unintended non-taxation under the operation of a simplified compliance regime for low-value goods. The main scenarios where this can occur are set out below.

- **Where a simplified compliance regime for low-value goods imports is combined with an import VAT low-value relief threshold:**
  - The default mechanism under a simplified compliance regime for imports of low-value goods that is combined with an import VAT low-value relief threshold at the item-level or consignment level is that customs authorities will not systematically inspect low-value consignments at the time of importation. Under this regime, VAT is imposed on the supply of the imported goods by the non-resident supplier. No VAT is due on the importation of these goods. This creates an opportunity for non-resident suppliers that should have registered for VAT to continue making supplies without meeting their collection responsibilities or having customs authorities

- collecting at importation. Tax authorities will generally need to take the initiative in addressing such instances of non-compliance.
- It also reduces the detection of possible errors by non-resident suppliers and digital platforms (e.g. in respect of consignment including both high-value and low-value goods or multiple low-value goods; currency conversion errors, etc.).
  - **Where a simplified compliance regime for imports of low-value goods is operated without an import VAT low-value consignment relief threshold:**
    - The customs authorities will normally verify whether non-resident suppliers have collected VAT at the time of supply for consignments that are subject to the simplified compliance regime for low-value goods. Where this is not the case, import VAT will be collected by the customs authorities. Non-taxation may occur when non-compliant, non-resident sellers fraudulently claim to have collected VAT at the time of supply and fraudulently use the VAT registration numbers of compliant suppliers to evade detection and assessment by customs authorities at importation. This can include non-compliance by non-resident suppliers selling through digital platforms that fraudulently use the platforms' VAT registration numbers to evade collecting VAT on sales they make to consumers outside this platform (direct sales).
    - In situations where digital platforms have full VAT liability, a lack of coordination between the key players can create inadvertent non-taxation. For example, an underlying supplier might incorrectly believe that the platform has accounted for VAT on certain supplies of low-value goods and label the packaging of its consignments to reflect this understanding. However, the platform may have refrained from collecting VAT because it reasonably believed the customs authorities would assess and collect the VAT because, for example, the platform assumed that the underlying supplier would consign multiple low-value goods for the same consumer together in a single consignment with a value above the customs duty relief threshold.

#### **4B.3.2. Minimising risks of double taxation and unintentional non-taxation through reporting and data exchange**

Information is key to minimising risks of double taxation as well as risks of fraudulent or abusive practices undermining the integrity of the tax. However, jurisdictions should balance the benefits of information reporting requirements proportionately against the costs of compliance for businesses.

The proper management of revenue risks and risks of double taxation under a simplified compliance regime for imports of low-value goods requires:

- The mandatory reporting by non-resident suppliers on the VAT settlement ("VAT paid") status of consignments that are subject to the simplified compliance regime
- The implementation of processes and infrastructure enabling customs authorities to identify the VAT settlement status of the goods at the time of importation

The main reporting requirement for a non-resident supplier under the simplified compliance regime for imports of low-value goods is:

- The notification to the customs authorities of its VAT registration number and
- The VAT settlement ("VAT paid") status of the consignments

Jurisdictions can require reporting of this information through the supply chain and/or the appropriate customs channels, which will notably allow the cross-checking of customs cargo data and VAT returns. However, tax and customs authorities are advised to note in this context that:

- Consumers often return goods and receive refunds, which is likely to lead to differences between the VAT liabilities that non-resident suppliers report in VAT returns and the cumulative values that

customs authorities record for imports (as customs authorities' records may not precisely capture export data/records for low-value goods that consumers return to suppliers).

- The value of goods for customs declaration purposes may not align exactly with the price that the consumer pays.
- Reporting inconsistencies may be caused by fraudulent actors using a supplier's VAT registration number without its knowledge.

Jurisdictions could establish a process whereby non-resident suppliers are required to indicate on the labelling of a package that they have collected VAT at the time of supply, and to provide their VAT registration number to customs authorities, ideally via secure electronic channels where possible. However, for practical reasons several jurisdictions do require or allow suppliers to inscribe their VAT registration number onto package labelling. Customs authorities and transporters thus can visually identify the VAT settlement status quickly. The inclusion of the same information in cargo reporting processes could also enable advance pre-clearance. Tax authorities should be aware, however, that this approach to demonstrating the VAT settlement status of consignments is potentially vulnerable to fraud, notably from the appropriation of compliant suppliers' VAT registration numbers by non-compliant suppliers seeking to evade both charging VAT on supplies and assessment by customs authorities.

The following subsections present further detailed guidance on information reporting tools and data sharing approaches to support tax and customs authorities risk management strategies, including data sharing between the jurisdiction's tax and customs authorities in the jurisdiction of taxation. These issues are also discussed, along with international administrative co-operation and information exchange issues, in Section 5 of this Toolkit.

#### **4B.3.3. Tools for reporting the VAT-settlement status of consignments**

A minimum level of documentation must accompany imports of goods on which non-resident suppliers have already collected VAT under the simplified compliance regime for imports of low-value goods, including proof of VAT collection at the point of sale and the VAT registration number of the supplier.

If they have access to appropriate technology, jurisdictions could combine these minimum requirements with additional tools such as customised barcodes<sup>78</sup>, QR ("quick response") codes<sup>79</sup>, RFID (radio frequency identification) tags<sup>80</sup> that provide a link to key transactional and tax compliance information to confirm the identity of the supplier and the "VAT-paid" status of goods.

Jurisdictions should align as closely as possible with existing standards for information reporting and labelling for consignments or seek international recognition for any new standard. For example, in respect of electronic advance data for use in the international post (i.e. M33 ITMATT standard<sup>81</sup>), it is important to note that the "S 10" barcode standard is the only standard used by the UPU and postal authorities. The UPU guidance note *Identification of postal items - 13-character (Data definition and encoding standards identifier)* explains that "The identifier is used for visibility in the supply chain, for example in an ITMATT message for electronic advance data" (Universal Postal Union, 2018<sup>[66]</sup>).


<sup>78</sup> Multiple international barcode standards exist, some of which businesses use exclusively in general distribution and logistics.

<sup>79</sup> See *QR code standards (ISO/IEC 18004)* by International Organisation for Standardisation at <https://www.iso.org/obp/ui/#iso:std:iso-iec:18004:ed-3:v1:en>.

<sup>80</sup> See *RFID standards (ISO/IEC 18000-63:2015)* by International Organisation for Standardisation at <https://www.iso.org/obp/ui/#iso:std:iso-iec:18000:-63:ed-2:v1:en>

<sup>81</sup> See WCO–UPU guidelines on the exchange of electronic advance data (EAD) between designated operators and customs administrations, pages 8 to 14 at <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/upu/joint-wco-upu-guidelines.pdf?db=web>.

Figure 4B.3. Examples of an S10 identifier on paper CN22 and CN 23\* customs declaration forms<sup>1</sup>



**CN 22**  
May be opened officially  
Designated operator  
Important! See instructions on the back.

|  |  |
|--|--|
| <input type="checkbox"/> Gift          | <input type="checkbox"/> Commercial sample |
| <input type="checkbox"/> Documents     | <input type="checkbox"/> Returned goods    |
| <input type="checkbox"/> Sale of goods |  |

| Quantity and detailed description of contents (1) | Net weight (2) | Value and currency (3) | H S tariff number* (4) | Country of origin* (5) |
|---|----------------|------------------------|------------------------|------------------------|
|   |                |                        |                        |                        |
| Total weight (in kg) (8)                          |                | Total value (7)        |                        |                        |

I, the undersigned, whose name and address are given on the item, certify that the particulars given in this declaration are correct and that this item does not contain any dangerous article or articles prohibited by legislation or by postal or customs regulations  
Date and sender's signature (8)

Size 74 x 105 mm, white or green

CN 22 (Back)

**Instructions**  
To accelerate customs clearance, you must complete all applicable fields, and fill in this form in English, French or in a language accepted by the destination country. If the value of the contents is more than 300 SDR, you must use a CN 23 form. You must give the sender's full name and address on the front of the item.

For commercial items, it is recommended that you complete the fields marked with an asterisk (\*), and attach an invoice to the outside, as it will assist Customs in processing the items.

Select a reason for export. ("Gift" is not an acceptable reason for export for commercial items.)

(1) Give a detailed description (generic descriptions such as "clothes" are not acceptable), quantity and unit of measure for each article, e.g. two men's cotton shirts.  
(2), (3) Give the weight and value with currency for each article, e.g. CHF for Swiss francs.  
(4) The HS tariff number (6 digits) is based on the Harmonized Commodity Description and Coding System developed by the World Customs Organization.  
(5) Country of origin means the country where the goods originated, e.g. were produced, manufactured or assembled.  
(6), (7) Give the total value and weight of the item.  
(8) Your signature and the date confirm your liability for the item.

Note. – It is recommended that designated operators indicate the equivalent of 300 SDR in their national currency

Optional. Must meet S10 standard, including barcode height.

CP 72 manifold set, first part – "Receipt"


(Designated operator)      The item/parcel may be opened officially

|   |          |        |        |          |                                     |
|---|----------|--------|--------|----------|-------------------------------------|
| <b>BEFORE COMPLETING THIS FORM, READ INSTRUCTIONS ON BACK CAREFULLY!</b><br>Your goods may be subject to restrictions | From     |        | Name   |          | Sender's customs reference (if any) |
|   | Business |        | Street |          |                                     |
|   | Postcode |        | City   |          | Tel. No.                            |
|   | Country  |        |        |          |                                     |
|   | To       |        | Name   |          |                                     |
| Business  |          | Street |        |          |                                     |
| Postcode  |          | City   |        | Tel. No. |                                     |
| Country   |          |        |        |          |                                     |

|   |              |                        |  |                                  |                                |
|---|--------------|------------------------|--|----------------------------------|--------------------------------|
| Detailed description of contents (1)  | Quantity (2) | Net weight (in kg) (3) | Value (5)  | <i>For commercial items only</i> |                                |
|   |              |                        |  | HS tariff number (7)             | Country of origin of goods (8) |
|   |              |                        |  |                                  |                                |
| Please indicate service required (tick one box)   |              |                        | Total gross weight (4)   | Total value (6)                  | Postal charges/Fees (9)        |
| <input type="checkbox"/> International Priority <input type="checkbox"/> International Economy  |              |                        |  |                                  |                                |
| Category of item (10)   |              |                        | Office of origin/Date of posting   |                                  |                                |
| <input type="checkbox"/> Gift <input type="checkbox"/> Returned goods <input type="checkbox"/> Other (please specify): _____<br><input type="checkbox"/> Documents <input type="checkbox"/> Sale of goods |              |                        | Number of parcels    certificates and invoices   |                                  |                                |
| Comments (11): (e.g.: goods subject to quarantine, sanitary/phytosanitary inspection or other restrictions)   |              |                        | Insured value SDR  |                                  |                                |
|   |              |                        | Total gross weight of the parcel(s)  |                                  |                                |
|   |              |                        | Charges  |                                  |                                |
| Licence (12)  |              | Certificate (13)       |  | Invoice (14)                     |                                |
| Licence number(s)   |              | Certificate number(s)  |  | Invoice number                   |                                |
| I certify that the particulars given in this customs declaration are correct and that this item does not contain any dangerous article prohibited by legislation or by postal or customs regulations      |              |                        | Date and sender's signature (15)   |                                  |                                |
|   |              |                        | Sender's instructions in case of non-delivery  |                                  |                                |
|   |              |                        | <input type="checkbox"/> Return to sender after _____ Days<br><input type="checkbox"/> Redirect to address below <input type="checkbox"/> Return immediately to sender<br><input type="checkbox"/> Address <input type="checkbox"/> Return/Redirect by surface/S.A.L. <input type="checkbox"/> Treat as abandoned<br><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> by air |                                  |                                |

**RECEIPT**

No(s), of parcel(s) (barcode, if any)



CP 007 075 992 NO

|   |         |
|---|---------|
| Insured value – Words   | figures |
| Cash-on-delivery amount – Words   | figures |
| Giro account No. and Giro centre  |         |
| Importer/addressee reference (if any) (tax code/VAT No./importer code) (optional) |         |
| Importer/addressee fax/e-mail (if known)  |         |

Size 210 x 148 mm (basic format A5) with a tolerance of 5 mm

**Note:**

- To take account of the needs of their service and/or the methods of production of this manifold set, designated operators may alter slightly the sizes of the boxes, the font for the titles and indication, provide the appropriate number of copies for each part, without however deviating too much from the directives contained in the model.
- It is strongly recommended that instructions helping the customer to complete this manifold set should be given on the back of the cover page or on the back (of the last page) of the manifold set itself.

1. The CN 22 and CN 23 are the standard customs declaration forms that apply to postal consignments, which the UPU authorises in its Acts currently in force. Customs officials use these forms for customs clearance purposes. The CN 22/23 forms contain the following information fields: 1). Sender and recipient information (CN 23); 2). Postage paid and insurance costs (CN 23); 3). S10 item identifier; 4). Designated operator; 5). Nature of transaction, i.e. gift, sale of goods, commercial sample, documents, other; 6). Quantity and detailed description of contents; 7). Weight, being individual item weight and total weight; 8). Value, being individual item value and total value, and currency; 9). HS tariff number per item, for commercial items only; 10). Country of origin of goods.

\* The CN 23 customs declaration can form part of the “manifold form” set that composes the wider CP 72 customs declaration, as in the image above with the title “CP 72 manifold set, first part - “Receipt” “. The CP 72 manifold set also incorporates the customer receipt, the CP 71 dispatch note, the parcel labels (CP 73 or CP 74), as well as parts that can be used for address labels. The CN 23/CP 72 is a more extensive form of declaration than a CN 22.

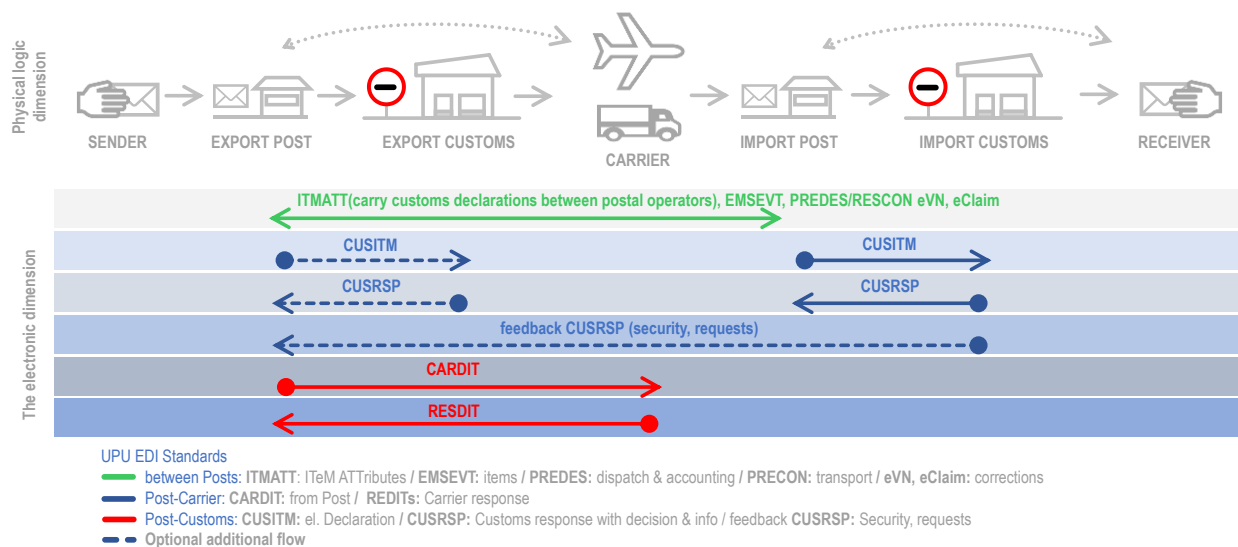
Source: WCO–UPU guidelines on the exchange of electronic advance data (EAD) between designated operators and customs administrations, (WCO; UPU, n.d.<sup>[67]</sup>).

#### **4B.3.4. Electronic exchanges of information in the goods supply chain**

Timely exchanges of information throughout the entire supply and delivery chain are important to mitigate risks of double taxation and unintentional non-taxation under a simplified registration and collection regime for low-value goods. This is achieved primarily through the exchange of electronic advance data (EAD) with customs authorities. Such EAD are normally available for goods that are transported via cargo and express courier channels. These EAD are also increasingly available for goods that are transported via postal operators, although at the time of writing this development is still in its early stages. Several jurisdictions have plans to mandate the exchange of EAD through the international post in 2021, including in both the United States and Europe.

Jurisdictions should carefully consider how transporters such as express carriers and postal operators can most effectively exchange information with customs authorities. The WCO-UPU guidelines on the exchange of EAD between postal operators and customs authorities outline electronic transmission standards and processes to facilitate customs clearance and revenue collection. EAD enables exchange of item-level attributes (ITMATT) between postal authorities, thereby communicating key information necessary for customs clearance. Postal authorities then transmit the information to the customs authority in the jurisdiction of destination via a customs item (CUSITM) to enable advance assessment for pre-clearance or selection of consignments for holding. The customs authorities will transmit a response (CURSP) to the postal authority to advise of the appropriate actions. The *UPU E-Commerce Guide 2020* (Universal Postal Union, 2020<sup>[68]</sup>) outlines the operation of, and developments in, EAD.

Figure 4B.4. High-level overview of electronic data exchange in the postal supply chain



Source: UPU Customs Declaration System 'CDS Brochure' (Universal Postal Union, n.d.<sup>[69]</sup>).

Although express carriers and postal operators have not yet fully implemented EAD, many have participated in pilot activities to test systems and some postal authorities are now routinely exchanging EAD.

#### 4B.3.5. Data sharing between customs authorities and tax authorities

Jurisdictions should ensure that appropriate legal, information technology and operational frameworks are in place to enable data sharing between customs authorities and tax authorities. Tax policymakers should consider at the policy design phase what actions they will need to take in order to achieve such data exchange including changes to existing laws and additional IT, capital and operational investments.

Even where a jurisdiction administers both tax and customs authority functions within a single government unit, legal separation of responsibilities can still limit what data tax and customs officers working within the same unit can share with one another. For example, a postal authority may have only legal ability to disclose information to customs officers. Likewise, a confidential register of non-resident suppliers that have registered for VAT under a simplified compliance regime for imports of low-value goods may be accessible only to tax officers by default. Therefore, tax authorities should consider information access requirements for both tax and customs officers and design new legal instruments to facilitate exchange where necessary, such as a memorandum of understanding/agreement (MOU/MOA) between the two sets of officials and their respective governance structures.

The WCO *Guidelines for Strengthening Co-operation and the Exchanging of Information between Customs and Tax Authorities at the National Level*<sup>82</sup> (WCO Customs and Tax EOI Guidelines) (World Customs Organization, 2016<sup>[70]</sup>) make recommendations on how to enable co-operation and exchange of information. These Guidelines also provide a framework of principles for the development and operation

<sup>82</sup> Spanish version of these guidelines is available at [http://www.wcoomd.org/-/media/wco/public/es/pdf/topics/facilitation/instruments-and-tools/tools/customs-tax-cooperation/customs\\_tax\\_guidelines\\_sp.pdf?db=web](http://www.wcoomd.org/-/media/wco/public/es/pdf/topics/facilitation/instruments-and-tools/tools/customs-tax-cooperation/customs_tax_guidelines_sp.pdf?db=web).

of MOU/MOA arrangements, which jurisdictions should consider as part of their policy implementation strategies.

Jurisdictions should establish appropriate procedures to enable customs authorities and, where appropriate, other entities in the supply chain to access VAT-relevant information. Customs authorities traditionally depend on the data they receive via customs declarations, whether the party providing these data is the supplier, transporters utilising simplified declaration and clearance procedures, or sometimes even the customer as importer of the goods. Declarations may not always contain correct information about a consignment as only the supplier is generally in full possession of verifiable source documentation.<sup>83</sup> Although under-declaration of the value of goods is a widespread problem under the traditional customs authority-led framework for VAT collection, most suppliers have a strong commercial interest in ensuring that they communicate accurate information throughout the supply chain.

A simplified compliance regime that imposes VAT collection responsibilities on non-resident suppliers and digital platforms at the time of supply significantly reduces the risk of non-compliance due to fraudulent under-declaration of the value of consignments. Under such a regime, however, customs authorities must shift their focus away from the declaration value of the goods to new critical pieces of information. Specifically, this critical information is the information on the packaging and customs declaration that states whether the supplier has collected the VAT on the imported items and that identifies the supplier's VAT registration number. Suppliers can also use these markers to inform customs authorities that the supply is a B2B transaction, which may not be subject to the simplified compliance regime, by identifying the VAT registration number provided to them by the customer. To improve the integrity of this customs verification process, customs authorities must have access to the tax authorities' register of VAT numbers for non-resident suppliers and, preferably, any records on suppliers' compliance history as well.

Tax authorities, for their part, will need access to customs information about the volume and value of imports of low-value goods on which suppliers claim to have collected VAT at the time of supply. This will assist tax authorities with risk assessment and risk management strategies. See also Section 5. However, there are practical limitations to the utility of customs information and, accordingly, tax authorities should be cautious in evaluating the results of data analysis when using this information for assessing compliance levels. These limitations include the following:

- Declared customs values, the amounts on which suppliers calculate VAT, and the amounts they declare on VAT returns may differ in the local currency of the jurisdiction of taxation as a result of foreign currency conversion rules.
- Parties to a transaction, e.g. a transporter or the customer, may amend customs declarations. Information relating to historical declarations therefore may accurately reflect volumes and values only for the moment in time when they are originally declared.
- Transposition and other errors can occur in the course of electronically recording the information on customs declarations.
- Depending upon the jurisdiction, export customs clearances, declarations and reporting may be set at different levels than corresponding determinations associated with the import process. In other words, the obligation to go through full customs clearance processes may be required for exports of goods with a higher value than would be the case for imports. This can affect whether customs records would be available to demonstrate customers' return of goods back to a non-resident supplier.

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<sup>83</sup> See a journal article on *Enhancing Visibility in International Supply Chains: The Data Pipeline Concept, Introduction*, *International Journal of Electronic Government Research*, 8(4), page 20 at <https://www.igi-global.com/gateway/article/74812>.

#### 4B.3.6. Alternative sources of information

Where tax and customs authorities are unable to obtain all relevant information through customs reporting processes alone, they could turn to additional third-party data sources for transactional data such as:

- Non-resident suppliers and digital platforms
- Financial intermediaries
- Jurisdictions' "Financial Intelligence Units"<sup>84</sup>

This information may not be readily accessible to tax or customs authorities. Therefore, they may need to utilise specified powers of legal access to obtain relevant information. Some of these potential mechanisms include:

- A MOU or other information sharing arrangement between customs and tax authorities where one set of authorities could access relevant data
- Information access powers, such as formal notices requesting information from suppliers, exporters, intermediaries or other actors in the supply and value chain
- Exchange of Information articles in Tax Treaties or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) that may be employed to obtain information about the supplier and any other relevant information that other tax jurisdictions hold

#### 4B.4. Facilitating fast-track customs clearance processes

Any policy framework that transfers the VAT collection on imports of low-value goods from the customs authorities to non-resident suppliers should recognise the continuing authority of customs authorities to subject all goods to inspection notably in respect of product safety and security. From a revenue assessment and collection perspective, however, a regime that transfers VAT collection obligations for imports of low-value goods to non-resident suppliers does provide opportunities for fast-track customs clearance of these goods. Fast-track customs clearance creates an important incentive for non-resident suppliers to comply with their VAT obligations under a simplified compliance regime for low-value goods.

The European Union's framework, effective 1 July 2021, adjusts the customs declaration processes to deliver fast-track clearance of consignments for which non-resident suppliers have collected VAT at the time of supply. Under the EU framework, it is possible to declare goods with a value up to EUR 150 (USD 171) using a customs declaration that requires three times less data than a standard customs declaration (European Commission, n.d.<sup>[71]</sup>).<sup>85</sup> If a non-resident supplier does not collect VAT under the simplified compliance regime for imports of low-value goods, then the transporter instead collects VAT. The EU model permits transporters to charge customers a clearance fee for submitting a customs declaration on the customer's behalf. The cumulative effect of these features is to incentivise consumers to buy from suppliers that have registered for VAT under the simplified compliance regime for low-value goods.

In Australia and New Zealand, low-value goods (i.e. below the GST and customs duty relief threshold) are not subject to *import VAT* except on goods that would attract excise duties. Customs authorities therefore will not routinely stop low-value goods for revenue collection purposes at the border. Australia operates a simplified customs clearance regime, which transporters (e.g. express carriers) administer for clearance of imports below the customs duty relief threshold. This allows for fast-track clearance with customs

<sup>84</sup> See *List of Members* by The Egmont Group at <https://www.egmontgroup.org/en/membership/list>

<sup>85</sup> The availability of the customs declaration with reduced data set in a Member State may depend on whether it manages to change its systems in time (which has to be done before 2023 at the latest).

authorities stopping only low-value goods for inspection if they have product safety and security concerns in relation to a consignment.

Many jurisdictions in the LAC region are parties to free trade agreements that may comprise the obligation to adopt or maintain customs processes for expediting clearance of imports. Because of these agreements, jurisdictions may already have in place processes, which they could expand and utilise in the context of simplified registration and collection regimes for non-resident suppliers of low-value goods. For example, Chapter 5 of the US Free Trade Agreement (FTA) (Office of the United States Trade Representative, n.d.<sup>[72]</sup>) with Colombia, Peru, Chile and CAFTA, respectively, use a similar model, which in general requires the parties to:

- Adopt or maintain procedures providing for the release of goods within a maximum time period.
- Endeavour to use information technology that expedites procedures for the release of goods; and adopt or maintain expedited customs procedures for express shipments.

## **Section 4C. Designing and Implementing the Administration for a Simplified VAT Registration and Collection Regime**

## Key messages

### Background and general overview:

Section 4A of this Toolkit provides guidance on the administrative and operational implementation of the recommended policy framework for the collection of VAT on supplies of services and intangibles by non-resident suppliers. It provides guidance on project management and on the administrative implementation of the specific recommended policy approaches that apply to supplies of services and intangibles by non-resident suppliers.

Section 4B builds further on the guidance provided in Section 4A, focusing on the administrative and operational implementation of the recommended policy framework for the collection of VAT on imports of low-value goods. This reflects the recommendation for a sequenced implementation of the recommended policy framework for the collection of VAT on digital trade, focusing first on online sales of services and intangibles and subsequently on imports of low-value goods from online sales.

This Section 4C provides detailed guidance for the design of a simplified VAT registration and collection regime for non-resident suppliers, which applies both to supplies of services and intangibles and to the imports of low-value goods. Section 4D complements the guidance in Section 4C with detailed analysis and guidance on the implementation of the central operational and IT infrastructure that supports a simplified VAT registration and collection regime for non-resident suppliers.

### The core aspects covered in Section 4C and the associated guidance on the design of a simplified VAT registration and collection regime for non-resident suppliers can be summarised as follows:

- **Online registration and compliance portal:** It is recommended that online registration and compliance be made available for non-resident suppliers under a simplified compliance regime. Section 4D of this Toolkit provides further detailed analysis and guidance on the IT-technical design and on the key elements of the architecture for a simplified VAT registration and collection online portal.
- **Simplified VAT registration:** It is recommended to limit the information needs for registration under a simplified compliance regime to the information that is functionally necessary to ensure the proper collection of the VAT from non-resident suppliers. Tax administration should eliminate operational, security and fraud risks as far as possible when designing the registration process.
- **Registration threshold for non-resident suppliers:** The possible application of a revenue-based registration threshold for non-resident suppliers deserves careful consideration. However, relieving non-resident suppliers of the obligation to register in a jurisdiction where they have only minimal sales can be beneficial to both suppliers and tax administrations, notably taking account of the relatively high costs of administering large numbers of suppliers generating limited potential VAT revenues.
- **Invoicing requirements:** Jurisdictions are encouraged to consider eliminating invoicing requirements for B2C supplies of services and intangibles under simplified registration and collection regimes for non-resident suppliers. In the case of imports of low-value goods, there are reasons why a jurisdiction may wish to continue imposing a requirement on suppliers to issue some form of invoice, though not necessarily a full VAT invoice. Where jurisdictions require invoicing, this Toolkit encourages them to take a pragmatic approach to provide flexibility, for instance as regards format, content or language.
- **VAT returns:** The Toolkit recommends that jurisdictions allow non-resident suppliers to file simplified VAT returns under a simplified compliance regime. These will generally require less information and supporting evidence than the VAT returns that tax administrations would require suppliers to file under their standard VAT regime, where such suppliers would have an entitlement to input VAT deduction.
- **Record-keeping:** Non-resident suppliers should keep reliable and verifiable records of the supplies they make into the taxing jurisdiction, preferably in electronic format. Tax authorities are encouraged to limit the

transactional data that suppliers must record to what is necessary to ensure that suppliers have charged and accounted for VAT correctly on each supply.

- **Input VAT recovery:** It is reasonable for a jurisdiction to operate a simplified compliance regime as a “pay-only” regime, i.e. limiting the scope of the regime only to the collection of VAT without making the recovery of input VAT available to the non-resident supplier. Such an approach may ensure a proper balance between simplification and the needs of tax administrations to safeguard revenue. Input VAT recovery could remain available for non-residents under the jurisdiction’s normal VAT refund procedure or under the standard VAT registration regime.
- **Foreign currency conversion:** Tax authorities should communicate how non-resident suppliers should convert the value of their sales for determining their VAT liability, for VAT reporting and for payment of the VAT due, in cases where supplies are made in a currency that is different to the currency in which VAT must be paid to the tax authorities in the jurisdiction of taxation.
- **Settlement of VAT due:** The use of electronic payment methods is recommended as a means to facilitate the payment process and reduce associated costs and risks for both non-resident supplier and tax administrations under a simplified compliance regime.

**Section 4C also analyses additional strategies and measures to enhance the effectiveness of tax administration and overall compliance levels under a simplified compliance regime for non-resident suppliers:**

- **Full liability regime for digital platforms:** This Toolkit highlights that a full VAT liability regime for digital platforms enhances compliance and reduces the costs and risks of administering, policing, and collecting VAT on the ever-increasing volumes of online sales. OECD guidance recommends that jurisdictions make their simplified registration and collection regime also accessible to digital platforms to comply with their obligations under a full liability regime.
- **Tax agents:** OECD guidance recognises that compliance for non-resident suppliers could be further facilitated by allowing such suppliers to appoint a third-party service provider to act on their behalf in carrying out certain procedures, such as submitting returns. However, OECD guidance does not recommend that jurisdictions require the appointment of a local fiscal representative under a simplified compliance regime.
- **Intermediaries other than digital platforms:** Although not recommended as the primary collection mechanism, jurisdictions could consider financial intermediary-led VAT withholding mechanisms as a backstop solution specifically on payments to non-compliant non-resident suppliers, and a disincentive to non-compliance. Some jurisdictions also foresee obligations for “redeliverers” as a fallback rule under certain circumstances.
- **Communications strategy:** An effective communications strategy is crucial to achieving appropriate compliance levels from non-resident suppliers. This Toolkit therefore recommends jurisdictions to:
  - Develop a staged communication strategy that allows for the delivery of clear, relatively short messages focused on key aspects of the simplified compliance regime in a phased approach.
  - Start communication early on in the design and implementation phase to raise early awareness among non-resident suppliers, digital platforms and other stakeholders that are likely to be affected by the reform.
  - Use a range of data sources that are available to identify and acquire information on non-resident suppliers, digital platforms and other stakeholders that are likely to be affected by the implementation of a simplified compliance regime.
  - Use a multi-channel communication strategy. This includes engaging with international and regional organisations (e.g. OECD, World Bank Group, World Customs Organization, CIAT, IDB) and industry bodies in reaching out to non-resident businesses, digital platforms and other relevant stakeholders

- Ensure that an appropriate lead-in time is provided for the proper implementation of the reform. By way of indication, 6-12 months from enactment of laws until their entry into force for services and intangibles and 12-18 months for imports of low-value goods is generally considered as an adequate lead-time.

**Note on Section 6 Checklists:** Readers will find a comprehensive set of checklists at Section 6 of the Toolkit. The purpose of these checklists is to support the design and implementation of an effective strategy for the collection of VAT on international B2C trade. The checklists do this by distilling and mapping out the main messages from all of the key areas that the Toolkit covers: policy, legislation, administration, operational and IT infrastructure, as well as audit and risk management strategies. This includes coverage of the subjects that Section 4C addresses in depth.

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## 4C.1. Designing and implementing the administration for simplified VAT registration and collection regimes

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#### 4C.1.1. Simplified VAT Registration

It is recommended that online registration be made available for non-resident suppliers under a simplified compliance regime. Section 4D of this Toolkit provides detailed analysis and guidance on the design and on the key elements of the architecture for a simplified VAT registration and collection online portal. The advice is to limit the registration process under a simplified compliance regime to the information that is functionally necessary to ensure the proper collection of the VAT from non-resident suppliers. Relieving businesses of the time and cost of providing unnecessary or excessive documentation to verify their identity is warranted, especially in cases where they do not need to recover input VAT in the jurisdiction of taxation. Such a minimalist approach to business identification for VAT registration under a simplified registration and collection regime could remain limited to the following information elements:

- The name of the business
- The trading name of the business
- Postal and/or registered address of the business and its contact person(s). Even where registration is electronic, a physical mailing address is useful in the event there is a system outage
- Names of responsible contact persons, including the title of the authorised person (e.g. "Indirect Tax Manager") to support continuity in case of any subsequent changes at the business level

It is recommended that businesses provide multiple contacts where possible.

- Telephone numbers of contact persons
- Email addresses of contact persons
- The URL(s) of the business's website through which it conducts its business with consumers in the jurisdiction of registration
- The business's tax identification number (TIN) in its jurisdiction of business establishment, where applicable

An optional feature could allow suppliers to identify during the registration process which types of supplies they intend to make – for instance by ticking a box next to all applicable categories. For example:

- Services and intangibles
- Online sales of goods

Jurisdictions could consider incorporating a facility to upload data files as part of the registration process to allow businesses to provide documents that the jurisdiction requires in an electronic format. This facility will generally be useful only if the tax authority has a strong desire to request supporting documents as part of registration despite the recommendations above to adopt a minimalist approach. Certain jurisdictions have, for instance, included the possibility in their simplified registration form to upload documents in an electronic format such as:

- Signed declaration form
- Certificate of incorporation
- Other attachments

Tax authorities will also need to design verification rules and any conditions under which registration applications must be rejected, such as incorrect formatting or failure to provide mandatory data. A balance between these rules and the goal of simplification is needed to ensure both the quality of registration data and ease of registration. In this connection, it would be useful if the registration system's functionality permitted registration applicants to save their draft applications and to retain the ability, on their own initiative, to update relevant details (such as their contact details) following registration.

It is strongly advised that suppliers be notified of their registration number under the simplified compliance regime by secure electronic means, e.g. an e-mail alert. For security purposes, registrants have sometimes been required at the registration stage to create a verification code that is later used to retrieve their VAT registration number. Assigning digital credentials or other identifiers may also help strike a balance between security considerations and ease of use. Digital credentials, security, and confirmation notifications are discussed further in Section 4D.

Some jurisdictions may lack the necessary administrative or technological capacity to implement and operate an online registration process. In such cases, they may consider implementing a registration process through a secure e-mail exchange, facilitated by a dedicated e-mail gateway address for all communications, registration applications and other processes. Tax authorities have noted that the risks associated with this approach, such as phishing, could increase and extremely careful email correspondence management is strongly recommended.

Tax authorities should ensure that access to a registration portal, and any applicable process to establish a digital credential permitting such access, be as easy as possible and be included in their web guidance and other communications. It is preferable that the communications be available in English as well as in the language of the jurisdiction. Jurisdictions can further consider making the information available in the language(s) of their main trading partners. To facilitate businesses that encounter problems with the registration, jurisdictions may also wish to set up contact points (e.g. a hotline) for support.

It is essential that information concerning taxpayer rights and dispute mechanisms be included in the information provided with respect to registration obligations. Section 4D of the Toolkit provides detailed guidance on the design and implementation of the operational infrastructure, especially information technology systems and software requirements, for a simplified VAT registration and collection portal, as well as on the generation of digital credentials and other related issues.

Finally, tax authorities should clearly set out the process by which a business can cancel its registration, e.g. if its turnover falls below a registration threshold (see also 'Changing registration types and cancelling VAT registration' under 4C.1.9 below).

#### *(i) The impact of simplified VAT registration on back-end IT systems*

Section 4D considers the impact of simplified VAT registration on a tax authority's existing operational and IT infrastructure. It notes that certain procedures, which jurisdictions typically support through "back office" IT tools, must be in place to enable tax officials and tax administration systems to carry out core tasks including to:

- Communicate with registrants
- Follow up on outstanding VAT returns or payments
- Validate returns
- Check if registered taxpayers are complying with their obligations
- Calculate revenue collected under the simplified compliance regime
- Manage transitions between simplified and standard VAT registration regime
- Manage cancellation of registrations

## *(ii) Ease of registration procedures – Use of e-mail as alternative to online portal*

Simplified VAT registration and collection should facilitate compliance for non-resident suppliers by limiting information that suppliers must provide to what is strictly necessary for the effective collection of the tax. Jurisdictions that have sought to align with this recommendation have noted that the ease with which a business can register, report and settle payment of its VAT obligations has been critical to encouraging compliance.<sup>86</sup> Ongoing communication with businesses that are subject to obligations under a simplified compliance regime not only helps in designing a simplified VAT registration process but also promotes the development of effective relationships and taxpayer support services. Examples of engagement include encouraging businesses to provide feedback through extensive consultation, user-design (pilot) testing, direct engagement and webinars throughout the implementation process.

Jurisdictions that may be unable to fund the development of an IT portal could consider e-mail channels for registration and filing of returns. However, any insecure process can present operational, security and fraud risks and create barriers to compliance. These risks and potential compliance challenges include the following:

- The vulnerability of manual forms to manipulation by persons attempting fraud against businesses and tax authorities.
- Difficulty to collect and validate an appropriate level of identity credentials in the registration process.
- Insufficiently rigorous checks on identity credentials and on the authenticity of the mandates of intermediaries acting (or claiming to act) on behalf of registrants.
- The protection of confidential taxpayer information included in VAT registration forms and returns.
- Complexity of processing communication (including return filing and other reporting requirements) in multiple languages.
- The inability of the tax administration to automate the validation of manually completed forms, leading to time-consuming manual verification and follow-up processes, including the gathering of any missing information from registrants.

The Forum on Tax Administration published the findings of a survey of tax administrations in member countries noting that while revenue bodies rely increasingly on electronic services to improve customer services and costs, there has also been an exponential growth in the frequency and sophistication of criminal attacks (OECD, 2012<sup>[73]</sup>).

A range of safeguards and protective systems are available to secure email channels including electronic user IDs, digital certificates, registered e-mail addresses, use of secure passwords and “code-card” challenges, and encryption. Some tax authorities provide the secure equivalent of an email service within their online portal for taxpayer registration and compliance, both under the simplified and standard VAT regimes. Where jurisdictions have not previously used methods of secure communication with non-residents, they may want to consider their compatibility with common IT systems that non-resident suppliers use to ensure that suppliers can adequately receive and inspect any information that the tax authority transmits securely, such as through encryption. This can be relevant when the jurisdiction of the registrant prohibits its businesses from accessing certain types of secure channels. Tax authorities therefore may wish to undertake some form of consultation and testing with tax advisors, tax authorities in other jurisdictions and with international businesses when designing their communication channels under

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<sup>86</sup> As an example, on August 4, 2020, Ecuador published Executive Decree No. 1114 with regulations for VAT on digital services. The regulations took effect on 16 September 2020. The registration process is completed via email exchange.

a simplified compliance regime. This will enhance the extent to which the approach they adopt is not only secure but also accessible, which is critical to its success.

### *(iii) Registration threshold*

A VAT registration threshold in this context refers to a threshold that a jurisdiction can adopt, typically by reference to the volume of supplies made to customers in that jurisdiction, below which a non-resident supplier has no obligation to register for VAT and to collect and remit VAT on these supplies in that jurisdiction.

OECD guidance<sup>87</sup> highlights that relieving non-resident suppliers of the obligation to register in a jurisdiction where they have only minimal sales may not lead to substantial net revenue losses in light of the offsetting costs of tax administration. It recognises, however, that the introduction of registration thresholds deserves careful consideration. Jurisdictions need to strike a balance between, on the one hand, the desire to minimise administrative costs and compliance burdens for both tax administrations and non-resident suppliers and, on the other hand, the need to maintain an even playing field between domestic and foreign businesses.

There is a wide variety of approaches that jurisdictions have adopted in respect of registration thresholds for non-resident suppliers under simplified compliance regimes.<sup>88</sup> These range from no threshold for non-resident suppliers in Chile, Colombia and the European Union to Singapore's dual threshold of global revenues of more than SGD 1 million (nearly USD 758 000) and revenues from supplies of "digital services" to Singaporean consumers of more than SGD 100 000 (nearly USD 75 800). Australia (AUD 75 000/nearly USD 52 000) and New Zealand (NZD 60 000/nearly USD 39 000) take an approach that aligns with the domestic registration threshold and relieves tax authorities of the costs of administering smaller non-resident suppliers that would provide minimal net revenue.

This variation in approaches will often reflect jurisdictions' existing VAT framework, their policy objectives (e.g. revenue collection and/or ensuring an even playing field between domestic and foreign suppliers) and administrative capacity. A registration threshold is particularly useful when there are limits on available administrative resources to manage possibly significant numbers of micro- and small suppliers that may lack capacity and perhaps the willingness to comply while posing only limited revenue risk. No or a very low registration threshold may have a negative impact on compliance, in particular filing rates, as the number of taxpayers may exceed administrative capacity, and some aspects of compliance management, such as monitoring filing obligations, are resultantly weakened (Schlotterbeck, 2017<sup>[74]</sup>).

Jurisdictions that adopt a registration threshold for non-resident suppliers should provide clear guidance on how suppliers should calculate the threshold and on how tax authorities will administer it, and they should make this information accessible in English and in the languages of the jurisdiction's main trading partners in addition to the jurisdiction's national language(s).

This guidance regarding registration thresholds should include information on time limits for registration if a non-resident supplier exceeds the registration threshold and any penalties or penalty concessions that may apply for late registration. Most tax authorities allow non-resident suppliers to self-assess whether they have reached or surpassed the registration threshold. A jurisdiction could instruct non-resident suppliers to periodically (e.g. monthly or quarterly) assess their activities both retrospectively against the previous 12 months and prospectively using forecasts for the next 12 months. If either historical activities

<sup>87</sup> The Guidelines, Paragraph 3.151.

<sup>88</sup> For a full comparison of registration thresholds in OECD member countries, please see: OECD (2020), *Consumption Tax Trends 2020: VAT/GST and Excise Rates, Trends and Policy Issues*, Annex Table 2.A.5. Annual turnover concessions for VAT registration and collection", in Chapter 2: "Value-added taxes - Main features and implementation issues", pages 90 to 94 at <https://doi.org/10.1787/152def2d-en>.

have exceeded or future activities will likely exceed the threshold under these measurements, then it could require the supplier to register.

Jurisdictions with a volatile currency that adopt a sales or revenue-based threshold may wish to establish and express the threshold for non-resident suppliers in a global reserve currency (e.g. USD or EUR). They could subject this to periodic review (e.g. annually or over another timeframe) to ensure alignment with any domestic registration thresholds.

#### *(iv) Public VAT registers*

Public VAT registers can be beneficial in incentivising non-resident suppliers to register and in providing confidence to domestic businesses and customers about the compliance of foreign competitors. However, publishing VAT registration numbers of non-resident suppliers that have registered under a simplified compliance regime can create significant fraud risks, particularly where this regime also applies to the collection of VAT on imports of low-value goods.

Customs authorities may require suppliers to provide their VAT registration number on a consignment as evidence that the suppliers collected VAT at the time of supply. The importance of the VAT registration number in customs authorities' verification process may create an incentive for fraudulent suppliers to appropriate the registration numbers of compliant suppliers and inscribe them on consignments to evade inspection for import VAT by customs authorities.

Jurisdictions would therefore be justified in excluding non-resident suppliers from any public VAT register, or in publishing only limited details, such as the trading and legal names of VAT-registered non-resident suppliers, without including VAT registration numbers.

### **4C.1.2. The role of transactional data**

Transactional data relate to the transactions in which an economic actor participates. They include data that the actor captures, for example, when it sells or purchases a product (Borek et al., 2014<sup>[75]</sup>). Parties to an online supply of services, intangibles or goods will normally create and maintain datasets that include the details of the supply in various formats. These parties include the supplier, digital platforms, the consumer, and financial intermediaries including payment service providers. Other organisations may also have access to this data, including government entities such as a jurisdiction's "financial intelligence unit". Subsections 4A.2.3.(ii) and 4C.4.2 explore strategies for identifying potentially in-scope non-resident suppliers through a range of third-party data sources.

Access to transactional data is important for tax authorities in designing and operating a simplified registration and collection regime, including for modelling the regime and for risk management and audit activities, for example:

- To identify the population of non-resident suppliers to which consumers make payments and/or to monitor the value of supplies that a particular non-resident supplier is making to consumers in a jurisdiction. Identifying and monitoring these entities will assist tax authorities in conducting targeted communications to non-resident suppliers advising them that they are likely subject to VAT registration and collection obligations. These communications could set out the details of the registration and collection regime.
- To use aggregate transactional data to determine the average total revenues per supplier in a given year. This will support the determination of a reasonable registration threshold.
- To cross-check transactional data against the information reported by non-resident suppliers (e.g. in VAT returns) and in other sources of information they hold in order to detect non-compliance.
- To make assessments of VAT due from non-resident suppliers that fail to engage with the jurisdiction in response to its communications and engagement strategies.

Despite the recognised importance of transactional data for the proper administration of a simplified compliance regime, it is not recommended that tax authorities request non-resident suppliers to report such granular transactional data as part of the regular VAT return submission process. This would complicate the compliance process considerably and thus defeat the purpose of the simplified compliance regime.

Tax authorities are therefore advised to explore their possible access to the wide range of third-party sources of transactional data and consider the usage of such data for the administration and compliance risk management of their simplified registration and collection regime for non-resident suppliers. In addition, tax authorities could limit their requests for transactional data to *ad hoc* requests to test the accuracy of a supplier's declaration of total revenues and tax payable on its VAT returns, e.g. as part of a specific tax audit procedure.

Subsection 4C.4.2 will further discuss available sources of transactional data. Section 5 of the Toolkit will cover the use of transactional data for risk assessment and management and for audit purposes, including the use of data analytics tools and prescriptive and predictive analysis. It also provides guidance on testing the quality of transactional data for risk management purposes.

### **4C.1.3. Invoicing requirements**

OECD guidance recognises that VAT invoicing requirements are among the most burdensome responsibilities of VAT systems. It therefore suggests that the elimination of invoicing requirements for B2C supplies under a simplified VAT registration and collection regime will normally provide significant administrative relief to non-resident suppliers and entail limited risks because consumers generally have no entitlement to recover the VAT they pay on such supplies.

This subsection considers possible approaches to invoicing under a simplified compliance regime for non-resident suppliers in some further detail for B2C supplies of services and intangibles and of low-value goods as well as for B2B supplies.

#### ***(i) Invoicing for B2C supplies of services and intangibles under a simplified compliance regime***

OECD guidance recommends that jurisdictions consider eliminating invoicing requirements for B2C supplies of services and intangibles under the simplified registration and collection regime for non-resident suppliers. It may be, however, that wider tax legislation and/or other national laws for regulation of trade or customer rights require suppliers to produce full tax invoices.

Where this is the case, jurisdictions are encouraged to take a pragmatic approach to provide flexibility and help reduce the costs that invoicing requirements can involve for non-resident suppliers under the simplified compliance regime.

Jurisdictions are encouraged to allow non-resident suppliers to utilise electronic format invoicing, especially due to the nature of the digital economy that generates most of the international trade in B2C services and intangibles. This could be considered in particular in Latin American jurisdictions in light of its experience as one of the world's leading regions regarding the adoption of electronic invoicing or "e-invoicing" solutions (Inter-American Center of Tax Administrations (CIAT), 2020<sup>[76]</sup>). It should be noted, however, that e-invoicing approaches in these jurisdictions are targeted essentially at supporting compliance by domestic businesses (Díaz de Sarralde Miguez Santiago, 2019<sup>[77]</sup>). Asserting control over invoicing processes is a primary objective of these e-invoicing regimes in order to prevent both the omission of sales and the inclusion of false purchases by suppliers (Barreix Alberto and Zambrano Raul, 2018<sup>[78]</sup>). Argentina, Brazil, Chile, Ecuador, Guatemala, Mexico, Peru and Uruguay all currently utilise e-invoicing systems, though in different ways.

The possible use of a jurisdiction's existing e-invoicing framework under a simplified compliance regime for non-resident suppliers will depend heavily on the design and operation of the jurisdiction's regime. Experience suggests that integrating a jurisdiction's e-invoicing requirements into a business's VAT compliance system can be particularly challenging for non-resident suppliers. Compliance challenges for non-resident suppliers with a jurisdiction's e-invoicing framework may include:

- The process for receiving authorisation to issue e-invoices, which may include the completion of specific application forms, the submission of records and certificates, and file format testing
- The invoice format, although most existing regimes in LAC jurisdictions may be using standardised formats, with XML as the most widely used language
- The use of "tax control codes", via a mechanism that inserts an electronic code into each invoice to make it valid for tax purposes
- Different e-signature systems to ensure the integrity and authenticity of invoices
- The requirement that e-invoices be issued through an "authorised provider" in the jurisdiction

Compliance by non-resident suppliers with the legal, administrative and technical requirements under existing e-invoicing regimes will often require the services of a specialised local service provider. This may create considerable compliance costs for non-resident suppliers and heavily impact the ease of compliance and overall compliance levels under a simplified compliance regime for non-resident suppliers. Jurisdictions may therefore wish to consider the use of an e-invoicing solution in respect of B2C supplies of services and intangibles by non-resident suppliers as a fallback option where the jurisdiction is not in a position to relieve non-resident suppliers of the obligation to issue invoices for such supplies. Jurisdictions may then wish to consider simplifying a number of requirements under existing e-invoicing frameworks to facilitate compliance for non-resident suppliers.

Alternatively, or in addition, jurisdictions could also consider acceptance of the following:

- Invoices that suppliers issue in accordance with the rules of their home jurisdiction
- Commercial documentation that suppliers issue for purposes other than VAT, e.g. electronic receipts
- Invoices in the languages of the taxing jurisdiction's main trading partners
- Flexible rules on invoice delivery, e.g. allowing customer self-printing

### ***(ii) Invoicing for B2C supplies of low-value goods under a simplified compliance regime***

Although the previous guidance advised that jurisdictions could permit non-resident suppliers to dispense with full VAT invoicing for B2C supplies of services and intangibles, there are additional practical issues to consider for such supplies of low-value goods under a simplified compliance regime. This is because:

- Double taxation may occur, in particular where, due to a lack of administrative coordination between suppliers, transporters and/or customs authorities, a customer is charged import VAT by the customs authorities even though this customer has already been charged VAT by the supplier at the time of sale.
- Consumers may have a right to a refund for the VAT paid on the supply when they return goods or because the supplier incorrectly charged VAT at the time of sale.

This does not necessarily mean that jurisdictions should require suppliers to produce full VAT invoices. It would normally be sufficient to provide the customer with some electronic or paper documentation, which states whether the supplier charged VAT at the time of sale and, if so, how much. This can greatly help protect customers against the risk of double taxation and facilitate requests for refunds by customers.

Against this background, jurisdictions may require that suppliers provide only minimal information relevant for the prevention of double taxation for VAT on supplies of low-value goods by non-resident suppliers. Jurisdictions are advised in particular to relieve non-resident suppliers of low-value goods under a simplified compliance regime of the obligation to disclose their VAT registration number on invoices. This will help prevent the fraudulent appropriation of VAT numbers by non-resident suppliers and reduce risks of non-taxation of imported low-value goods. Subsection 4B.3 further explores these elements, with Annex E also containing examples from a selection of jurisdictions. The European Union is one example of a jurisdiction that relieves non-resident suppliers from the requirement of including VAT registration numbers on invoices under the EU's simplified registration and collection regime for low-value goods.

### *(iii) Invoicing for international B2B supplies under a simplified compliance regime*

Jurisdictions around the world take a wide variety of approaches to invoicing requirements for non-resident suppliers making international B2B supplies into a jurisdiction, where the jurisdiction requires domestic business customers to perform a reverse charge (or treats such supplies as free of VAT).

For example, Australia<sup>89</sup>, Chile<sup>90</sup>, New Zealand<sup>91</sup> and Singapore<sup>92</sup> do not require full VAT invoices for international B2B supplies. In addition, Colombia<sup>93</sup> does not require invoices, but its legislation allows the tax administration to request electronic invoices in the future. Other jurisdictions, however, have established special invoicing requirements including India<sup>94</sup>, Mexico<sup>95</sup>, Russia<sup>96</sup> and South Africa<sup>97</sup>. Mexico requires non-resident suppliers to issue electronic invoices for both taxable and non-taxable supplies of digital services, indicating the VAT that the supplier has charged where appropriate. Barbados requires that a supplier provide an invoice if requested by a VAT-registered business customer.

In general, domestic businesses should be able to rely on an invoice that a non-resident supplier issues as long as it contains the relevant information, such as:

- The name and address of the supplier

<sup>89</sup> See Australian Taxation Office, *GST cross-border transactions between businesses* at <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Doing-business-in-Australia/GST-cross-border-transactions-between-businesses/>.

<sup>90</sup> See Chilean VAT Law, Article 35 C.

<sup>91</sup> See New Zealand Inland Revenue Department, *GST for overseas businesses: Supplying remote services into New Zealand* at <https://www.ird.govt.nz/gst/gst-for-overseas-businesses/supplying-remote-services-into-new-zealand>.

<sup>92</sup> See Inland Revenue Authority of Singapore, *IRAS e-Tax Guide: GST: Taxing imported services by way of an overseas vendor registration regime (second edition)* at [https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax\\_Guides/etaxguide\\_GST\\_Taxing%20imported%20services%20by%20way%20of%20an%20overseas%20vendor%20registration%20regime.pdf](https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_GST_Taxing%20imported%20services%20by%20way%20of%20an%20overseas%20vendor%20registration%20regime.pdf).

<sup>93</sup> See Colombian Law No. 2010 of 02019, article 4.

<sup>94</sup> See Global VAT Compliance, *India: Key features of mandatory GST e-invoicing as from 1 October 2020 clarified* at <https://www.globalvatcompliance.com/india-key-features-of-mandatory-gst-e-invoicing-as-from-1-october-2020-clarified/>.

<sup>95</sup> See Taxamo, *Digital VAT/GST rules around the world* at <https://cdn2.hubspot.net/hubfs/2759176/Marketing/Taxamo%20booklet%20digital%20tax%20rules%20around%20the%20world.pdf>; BIZLatin Hub, *Understanding Mexico's Digital Services Tax For Businesses* at <https://www.bizlatinhub.com/understanding-mexicos-digital-services-tax-for-businesses/>.

<sup>96</sup> See DLA Piper, *Russia's new VAT rules on cross-border e-commerce services: Key points for B2B service providers* at <https://www.dlapiper.com/en/us/insights/publications/2018/06/russias-new-vat-rules-on/>.

<sup>97</sup> See DLA Piper, *Country Specific: South Africa - South Africa draws more foreign suppliers of electronic services into its VAT net* at <https://www.dlapiper.com/no/global/insights/publications/2019/05/vat-monthly-alert-april/country-specific-south-africa-april/>.

- Invoice number and date
- A description of the supplied items
- The value of the supply, i.e. consideration that the customer must pay for the supply

Jurisdictions could require non-resident suppliers to provide supplementary information, if such suppliers are unable to provide all of the information under the standard invoicing requirements. For example:

- If a supplier issues an invoice in a foreign language, the jurisdiction could direct the business to translate it.
- Requesting copies of contracts and other supporting documentation to be submitted (ideally in an electronic format) where it is necessary to provide additional explanation of the services that a non-resident supplier is providing.
- Any alternate documentation that would provide relevant information when an invoice is not available.

Jurisdictions that operate an e-invoicing system for domestic suppliers may consider whether to extend this requirement to non-resident suppliers making B2B supplies, notably to facilitate the input VAT recovery for domestic business customers.

#### *(iv) VAT-inclusive pricing*

A jurisdiction's VAT, trade or consumer protection laws may require VAT-inclusive pricing of B2C supplies. The existing rules in the LAC region show a large variation, and include the following examples:

- In Argentina, certain states (provincias) have enacted rules requiring local businesses to display VAT-inclusive prices for reasons of consumer protection. However, for sales through digital platforms that are subject to Argentina's financial intermediary withholding regime, VAT is charged by financial intermediaries on top of the value of the consumer's payment as an extra charge. The price paid by the consumer for purchases through the platform is then considered to be VAT-exclusive.
- Colombian consumer protection laws require suppliers to provide "sufficient information" to customers and therefore deem prices to be VAT-inclusive unless the supplier expressly indicates to the contrary.
- Ecuador has implemented legislation setting out that consumers have the right to "accurate and non-misleading information" (Article 52 of the Political Constitution). On that basis, the tax authority requests businesses to display VAT-inclusive prices.
- Mexico requires digital platforms to display VAT due separately or to expressly indicate that a price is VAT-inclusive.
- In Uruguay, Article 20 of the Customer Protection Statute requires businesses to display the full final price that the consumer must pay, including taxes.

It is important to note in this context, that a non-resident (online) supplier or digital platform will normally be able to display a VAT-inclusive price only when it can determine the place of taxation of the supply. This will require knowing the customer's status (when a VAT regime distinguishes between B2B and B2C supplies) and the jurisdiction of the customer's usual residence for B2C supplies of services and intangibles or the location to which a supplier should deliver a consignment in the case of B2C supplies of low-value goods. In practice, a non-resident supplier or digital platform will typically be able to make that determination only when the consumer reaches the "virtual checkout" on the supplier's or the platform's website and confirms its location.

In light of this, within the framework of consumer protection laws, jurisdictions may wish to carefully consider the possibility of applying an exception to normal rules that requires suppliers and platforms to

display VAT-inclusive pricing only after the consumer has confirmed its residence for services or delivery destination for goods. Suppliers and digital platforms should in any case clearly communicate to consumers in advance of a sale that taxes could apply at the checkout stage depending on the details of the supply and the customer.

Jurisdictions might also consider whether there is any need to state the currency in which suppliers should display prices and VAT due to consumers.

#### **4C.1.4. VAT returns**

Most jurisdictions with simplified compliance regimes for non-resident suppliers of services and intangibles and of low-value goods have implemented simplified electronic return filing procedures. These returns require minimal VAT information and typically have quarterly filing deadlines.

Satisfying obligations to file VAT returns can be a complex process for non-resident suppliers resulting in considerable compliance burdens for suppliers and digital platforms that often face obligations in multiple jurisdictions. It is therefore recommended that jurisdictions consider authorising non-resident suppliers to file simplified returns under a simplified compliance regime, which would be less detailed than returns required for local businesses that are entitled to input VAT deduction. For example, jurisdictions could limit required information on VAT returns under a simplified compliance regime for non-resident suppliers to:

- The supplier's VAT registration number, which the tax authority could pre-populate from the supplier's online taxpayer account
- The return period
- If suppliers can submit returns in foreign currencies, then the currency and, where relevant, the exchange rate the supplier has employed
- Total sales
- VAT payable at the standard rate
- VAT payable at reduced rate(s), if any
- Total VAT payable

Tax authorities should require non-resident suppliers to keep records of the underlying accounting information and supporting evidence on which the VAT return is based, which will need to include more granular information to support tax authorities' audit requirements. This information should be made available to the tax authorities on request. See subsection 4C.1.5 on record-keeping requirements.

Tax authorities are encouraged to allow the application of reasonable and coherent methods of rounding the amounts in the VAT return to the nearest whole number or appropriate decimal point, in line with what suppliers use for internal accounting purposes.

Jurisdictions that operate a website and that operate an online portal through which non-resident suppliers can register and comply with their VAT obligations under a simplified compliance regime are advised to provide a central location on their website for suppliers to easily access the online portal for filing VAT returns and making VAT payments to the tax authority.

Tax authorities should provide clear instructions on their website for completing and submitting VAT returns under the simplified compliance regime, including on the information that is required for each of the informational fields on the VAT return. The tax authority may also include links to additional guidance material, such as currency conversion rules.

This information could be complemented further with information on any penalties that may apply to late filing of returns, including the circumstances under which tax authorities may waive or reimburse them (e.g. disruption of business systems due to natural disaster).

It is recommended that tax authorities include a validation mechanism for the automatic acceptance/approval or rejection of VAT returns. In their simplest form, these checks could identify whether the vital elements of the return are provided and whether suppliers have entered the information in the proper format. A balance between robust validation rules and simplification is needed in order to ensure both quality of data and ease of use.

Some jurisdictions may lack the necessary administrative or technological capacity to implement and operate an online portal for a simplified compliance regime, including an online VAT return process (see also subsection 4C.1.1). In these exceptional circumstances, they may consider implementing a VAT return process through an alternate channel with appropriate safeguards, such as a secure e-mail exchange. To facilitate compliance and administration under such an e-mail-based approach, jurisdictions could consider adopting the following features of the e-mail-based approach:

- Using a dedicated email address for VAT returns so that jurisdictions can properly segregate and manage the returns
- Sending confirmation emails to registrants that the tax administration has received their VAT return and payment
- Ensuring that the dedicated email channel is supported by dedicated administrative and IT staff to resolve issues quickly

To limit security risks under an e-mail-based approach for VAT return filing under a simplified compliance regime, tax authorities are strongly advised to require only those pieces of information on the VAT return that are essential to identifying the non-resident supplier and to determine the VAT due at an aggregate level.

A jurisdiction could consider releasing non-resident suppliers from the obligation to submit a return for a period if the total VAT payable remains below a negligible amount as specified by the tax authority. Instead, the supplier could include any residual VAT payable in a future filing period. It must be recognised, however, that such an approach could be difficult to reconcile with a tax authority's taxpayer account management system, which may be configured to automatically flag non-submission of returns and to send a reminder to non-resident suppliers to make a submission.

Section 4D of the Toolkit provides further technical analysis of the design features for the IT and operational systems that make online VAT returns available to non-resident suppliers, including features related to account access, security, and confirmation notifications for suppliers.

#### **4C.1.5. Record-keeping and data storage**

Non-resident suppliers should keep reliable and verifiable records of the supplies they make into the taxing jurisdiction, preferably in electronic format. This is particularly important when jurisdictions undertake audit verification processes.

Jurisdictions are encouraged to allow non-resident suppliers to use, to the widest possible extent, their internal business records and accounting systems to fulfil record-keeping obligations under a simplified compliance regime. In addition, allowing remote data storage, i.e. outside the taxing jurisdiction, in an electronic format and in conformity with the relevant privacy protection rules may provide significant benefits for both tax administrations and taxpayers (see subsection 5.3.2).

Because it is likely that most supplies will be of a high-volume, low-value character, tax authorities are encouraged to limit the transactional data that suppliers must record to what is necessary to ensure that suppliers have charged and accounted for VAT correctly on each supply. Jurisdictions could limit the information that suppliers must record to the following:

- Type of supply

- Date of the supply
- VAT payable
- Information that the supplier used to determine the usual residence of the consumer

Further information to be kept available should notably include:

- Copies of invoices and underlying accounting records for all B2C supplies for which the non-resident supplier has an obligation to collect and remit the VAT under the simplified compliance regime.
- Records identifying B2B supplies and indicating whether the non-resident supplier charged VAT on these supplies or whether it made them VAT-free based on the jurisdiction's requirement that the business customer to perform a reverse charge. Suppliers should support this information with reasonable evidence to support the determination that a customer is a VAT-registered business customer, e.g. its VAT registration number or a tax identification number (TIN).
- Records and supporting evidence for VAT-exempt supplies, zero-rated supplies and reduced-rated supplies.

For example, Norway<sup>98</sup> requires suppliers to keep a list of, respectively, supplies of “electronic services” and supplies of low-value goods to Norwegian private individuals. The list must be sufficiently detailed to permit comparison with the VAT return and thereby function as a means of verification for audit purposes. Suppliers must store the records for 5 years and make them available electronically within three weeks at the Norwegian tax authorities' request.

Where digital platforms facilitate supplies for underlying non-resident suppliers, jurisdictions will need to impose additional record-keeping obligations so that these platforms not only preserve a record of their own revenue generating activity but also details of the supplies made by underlying suppliers that they facilitate. This would include key information such as underlying supplier's name, address, VAT registration number or tax identification number (TIN). Subsection 4C.2 further explores the impacts on administration, including record-keeping requirements at 4C.2.2, of measures for the enlistment of digital platforms in the VAT collection process.

If tax authorities include a requirement to make the records electronically available within a reasonable timeframe and in a readable format, they are advised to consider the following principles<sup>99</sup>:

- Direct suppliers to maintain the usability and readability of data throughout the mandatory retention period. If suppliers encrypt their data, they should maintain the necessary key-recovery procedures to ensure that they can make decrypted data available to tax authorities in a readable format.
- Directing suppliers to have appropriate safeguards in place to secure their records regardless of whether such records are stored electronically or in paper form.
- Adopting a reasonable and proportionate period for the mandatory storage of data in order help reduce the costs of storage of bulk data. A retention period consistent with that in place for registrants under the standard VAT regime should be sufficient.
- Jurisdictions may consider waiving the obligation to store very sensitive data fields for long periods because this increases the risk of misappropriation, e.g. hacking to acquire payments details; identity theft, etc.

<sup>98</sup> For example, see Norwegian Tax Administration, *VAT on Electronic Services* at <https://www.skatteetaten.no/en/business-and-organisation/vat-and-duties/vat/foreign/e-commerce-voec/electronic-services/legal-information/which-electronic-services-are-included-in-the-system/>.

<sup>99</sup> The Collection Mechanisms Report, Paragraphs 135-140.

#### 4C.1.6. Input VAT recovery

OECD guidance recommends that simplified registration and collection regimes for non-resident suppliers be designed and operated exclusively to facilitate payments of VAT due by non-resident suppliers (“pay-only” regimes) and thus to exclude systematic refunds under this regime.<sup>100</sup> Most non-resident suppliers that register under such a regime make remote online supplies and are unlikely to incur substantial amounts of input VAT in the taxing jurisdiction. This recommended approach strikes a balance between simplification and the requirement that tax administrations safeguard revenue, and it also mitigates significant administrative burdens and refund fraud risks.

There nevertheless may be certain circumstances under which suppliers that have registered under a simplified compliance regime wish to recover input VAT on an *ad hoc* or one-off basis. For example, this issue may arise when staff members of such a supplier visit the jurisdiction of consumption as part of a trade show or through other local engagements. Input VAT recovery could then remain available under the jurisdiction’s normal VAT refund procedure.

A jurisdiction could also allow non-resident suppliers that wish to seek a more systematic input VAT relief to register for VAT under the standard regime. This could be the case for example for suppliers that import goods in bulk into a jurisdiction for storage in a domestic fulfilment warehouse before selling those goods to consumers in that jurisdiction.

A simplified approach could permit non-resident suppliers to offset deductible input VAT against VAT payable on their periodic VAT return under the simplified compliance regime. Jurisdictions could combine this with a limit on the maximum amount that may be deducted under that approach, prohibiting in any case the deduction of amounts in excess of the VAT payable to prevent suppliers from being in a net refund position. A free-text field in simplified VAT returns would then allow suppliers to explain any discrepancies between total taxable supplies and VAT due, which could arise because of netting off recoverable input VAT against the payable VAT. Where jurisdictions wish to substantiate input VAT recovery claims, they could implement a simplified compliance approach that demands only essential supporting evidence such as invoices.

Jurisdictions can further limit the risk of excessive claims and the potential for abuse through appropriate rules, including:

- If a jurisdiction provides its tax authority with discretion to issue refunds to suppliers in some circumstances, then it should implement robust checks to verify supplier claims.
- Limiting input VAT recovery to only a maximum, fixed proportion of the value of total supplies and VAT payable.
- Limiting the timeframe for which suppliers can make retrospective input VAT recovery claims, including the treatment of costs they incurred shortly prior to or as part of registration.

New Zealand, for instance, enables non-resident suppliers to recover input VAT under its simplified compliance regime to the extent that the relevant inputs are used for making taxable supplies in New Zealand.

#### 4C.1.7. Foreign currency conversion

##### (i) Exchange rates

In online trade, it is common for suppliers to display sales prices and to require payment in a currency other than the official currency of the jurisdiction of their customers. This will often be the case for supplies to customers in smaller jurisdictions. When a supplier executes a transaction in a currency that is different

<sup>100</sup> The Guidelines, paragraph 3.140.

from the currency a jurisdiction mandates for VAT reporting, tax authorities must determine and communicate how non-resident suppliers should convert the value of their sales for calculating the amount of VAT due and for submitting VAT returns and making payments.

Tax authorities are recommended to publish rules governing currency conversion procedures on their website. Inclusion of these rules in specific guidance on the operation of the simplified registration and collection regime will also be of great assistance to non-resident suppliers.

Most jurisdictions that have implemented a simplified compliance regime provide details of or links to official published rates that suppliers can utilise for conversion into the currency of reporting and payment.<sup>101</sup> Some tax authorities allow businesses to choose among different conversion methods, such as other commercial rates or use of internal business rates, where they are based on averages of official rates over time (with a built-in tolerance for small differences). Examples of conversion methods that jurisdictions mandate or permit are:

- Rates published by the jurisdiction's (or another jurisdiction's) central or reserve bank
- Rates determined by other organisations, notably those that actively trade in foreign currency markets, such as commercial banks
- A rate agreed by the supplier and customer for the period of a business agreement

Clear guidance should be given to businesses as to any other rules concerning the use of conversion rate methodologies. These may include rules regarding the question of whether the method must be used consistently over time or whether tax authorities permit a change in method (e.g. after 12 months), and whether a change requires notification to or prior approval by the tax administration.

### *(ii) Timing of foreign currency conversion*

Jurisdictions should specify conversion date options for non-resident suppliers, i.e. the date or range of dates at which suppliers can convert the value of supplies into the currency of reporting and payment. Tax authorities should direct businesses to apply the same option consistently. The following conversion date options could be considered:

- The transaction (sales) date
- The day on which the payment is received for the supply
- The invoice date or
- The final day of the tax period. If suppliers choose this option, they should apply the rate to all sales on which VAT is payable for the period

Some jurisdictions allow non-resident suppliers to choose between cash accounting or accrual accounting. This often depends upon the business's level of revenue. For businesses that use cash accounting for VAT purposes (i.e. by reference to actual receipt of the payment for the supply), jurisdictions may consider excluding the option for such suppliers to convert the value of supplies based on the exchange rate on the final day of the tax period and even mandate that such suppliers utilise the rate on the day that the consumer makes payment for the supply. In this context, it is important to note that the International Federation of Accountants reports that many LAC jurisdictions are transitioning from cash accounting to the general adoption of accrual accounting by both businesses and government (International Federation of Accountants, n.d.<sup>[79]</sup>).

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<sup>101</sup> See the example for Singapore – Inland Revenue Authority of Singapore, *Exchange Rates* at <https://www.iras.gov.sg/irashome/Quick-Links/Exchange-Rates/>.

### ***(iii) Additional foreign currency conversion considerations***

Some supplies may be made on a periodic or continuing basis. Jurisdictions should clarify whether suppliers in such cases must treat each periodic or continuing component of the supply as if it were a separate supply for VAT accounting and subject each component to the exchange rate that applies to the reporting period in which it falls.

Jurisdictions that choose to develop or support the use of Application Programming Interfaces (APIs) by non-resident suppliers could make the official exchange rate available to non-resident suppliers through an API to facilitate the conversion of foreign currency for returns and payments. Subsection 4D.3.2.(iii) contains further analysis of APIs.

### ***(iv) Foreign currency conversion rules for determining whether supplies of goods by non-resident suppliers are “low-value”***

Under a simplified compliance regime for imports of low-value goods, non-resident suppliers will need to determine whether goods that they sell in a foreign currency meet the definition of a low-value good in the jurisdiction of taxation. This determination will normally need to be made by reference to that jurisdiction's customs duty relief threshold.

Jurisdictions will need to establish appropriate foreign currency conversion mechanisms for non-resident suppliers to apply when determining whether the goods they supply should be treated as “low-value” and the time at which this valuation and conversion must be carried out. Possible approaches to establishing the appropriate time for determining the value of goods supplied by non-resident suppliers under a simplified compliance regime, and the related currency conversion, include:

- The time that the customer orders the goods
- The time when the consideration for the supply is agreed with the customer (e.g. Australia)
- The time when a customer provides a contractual signature or a supplier processes a contract
- The time when a supplier issues an invoice
- The time when a customer makes a payment, or
- The time that is relevant for customs law (if this is not one of the above).

In all cases, jurisdictions can require that suppliers utilise a range of foreign exchange rates for converting the value of supplies that they make in foreign currency based on the appropriate date and time at which to determine that value. Options include:

- A rate that is published by the jurisdiction's central bank or reserve bank, or
- A reference rate published by another jurisdiction's central bank, or
- An exchange rate provided by a commercial foreign exchange trader (like a bank).

If feasible, the jurisdiction may wish to consider prescribing the rates of organisations that consistently value the local currency higher than the central bank of the taxing jurisdiction, i.e. greater units of foreign currency per unit of local currency. This conservative approach would mean that non-resident suppliers are more likely to determine goods as low-value and account for VAT on such goods at the time of supply thus reducing risks of non-taxation because of currency fluctuations between time of sale and importation.

Jurisdictions should also outline whether specific conditions apply to such currency conversion options such as a requirement that the supplier use a particular exchange rate consistently over a specified timeframe.

#### 4C.1.8. Settlement of VAT due

OECD guidance for simplified compliance regimes recommends that jurisdictions facilitate ease of settlement of VAT due through the offering of electronic payment methods. It is crucial that tax authorities provide clear guidance on what means of payment they will accept.

Jurisdictions are advised to consider the following approaches to facilitating the electronic payment of VAT due by non-resident suppliers under a simplified compliance regime:

- Ensure that non-resident suppliers have available payment options that are low-cost, provided they are adequately secure.
  - For example: New Zealand offers a wide range of payment methods for non-resident suppliers in addition to more conventional payment options. These options include payment methods offered by businesses such as “OFX”, “OrbitRemit”, “Western Union” and “xe.com”.
- Accept payments in the currencies of the jurisdiction’s main trading partners and in major reserve currencies.
  - For example, Chile allows registrants under its simplified compliance regime to pay in USD, EUR or CLP (Chilean Pesos).

Jurisdictions will have to indicate the conversion rate to be used for the payment of VAT due in a foreign currency. They may wish to condition suppliers’ ability to choose the currency in which they make their VAT payments by requiring that suppliers utilise only the currency they first selected and requiring them to obtain approval from the tax authority before switching to another currency.

- Exempt non-resident suppliers under a simplified compliance regime from any requirement to maintain a local bank account. Opening a local bank account abroad can be a very burdensome administrative process for a non-resident supplier involving, for example, extensive proof-of-identity checks. Jurisdictions should refrain from mandating the opening of a local bank account especially if doing so would require the supplier to create a presence in the jurisdiction in order to act as proprietor of the account.
- Ensure that appropriate safeguards are in place to mitigate risks from potential attacks on electronic payment channels (see subsection 4D.3.2, notably parts (v) to (vii)).

Tax authorities are advised to clarify whether non-resident suppliers should bear the costs of foreign currency conversion and any fees that banks or PSPs charge to ensure that the VAT due is settled in full and that the tax authority does not experience a shortfall.

The online portal for a jurisdiction’s simplified compliance regime should normally generate a payment reference number when a supplier files its VAT return or provide the supplier a payment reference upon registration, which it can retain for all payments. The supplier can then specify the payment reference number as an identifying reference for its bank or PSPs to cite when executing the payment. The tax authority can then more easily reconcile the payment with the supplier’s VAT return. Providing a standard payment reference number unique to a particular supplier may assist the supplier in managing its accounting system more effectively. Following payment, tax authorities are advised to send a notification or receipt to the supplier through a secure channel and confirm settlement of the VAT due on the supplier’s online taxpayer account.

Tax authorities should communicate clearly the interest and/or penalties may apply to late payments, including the circumstances under which tax authorities may waive or reimburse the interest and/or penalties. When suppliers overpay VAT, jurisdictions must ensure that suppliers understand any time constraints that apply to the processing of refunds and any arrangements for the payment of interest on overpayments. Subsection 4C.1.9 provides further analysis of refunds and amendments.

Tax authorities should consider the design features analysed in subsections 4D.1 through to 4D.3, which relate to building and maintaining an online portal for simplified registration and collection that is secure

and robust and includes payment processing and protection of confidential financial and banking data of non-resident suppliers.

#### **4C.1.9. Additional elements in developing the administration for simplified VAT registration and collection regimes**

##### ***(i) Changing registration types and cancelling VAT registration***

Non-resident suppliers registered under a simplified compliance regime may request to change to a standard VAT registration and vice versa. Where tax authorities permit such changes under appropriate circumstances, they should communicate the process for changing and consider practical administrative matters for managing the transition, including maintaining continuity in suppliers' taxpayer accounts and records and ensuring that suppliers understand any changes in obligations resulting from switching registration types.

Jurisdictions should also set out a process for suppliers to cancel their registration and for tax authorities to initiate cancellation in the interest of risk management. They should also provide guidance on ongoing obligations for suppliers after cancelling registration such as periodic self-assessment of whether they will exceed any registration threshold in the next 12 months.

##### ***(ii) Considering differential VAT treatments and rates***

Several LAC jurisdictions apply multiple VAT rates that could also apply to online sales depending on the nature of the supply (particularly to supplies of goods). These include Brazil and Peru for numerous types of supplies, Colombia for online health services and Uruguay for online hotel services. Jurisdictions in such a situation should ensure that VAT returns under a simplified compliance regime permit the disaggregation of VAT due by the number of different applicable VAT rates. Tax authorities should assist suppliers in making the correct taxing decisions by publishing guidance material on identifying the correct VAT rate for a supply.

##### ***(iii) Corrections and amendments to VAT returns***

For a variety of reasons, non-resident suppliers may need to report corrections or amendments to VAT returns in connection with VAT they have previously reported and paid. For example, such corrections may be necessitated by as a result of cancelled orders, returns of supplies, or accounting or systems errors resulting in a supplier reporting and paying incorrect amounts. In addition, a tax authority's audit or other compliance actions can result in a requirement for suppliers to make corrections and amendments.

Many jurisdictions require the supplier to amend the original VAT return. This may be complex to administer under a simplified compliance regime. Where an amendment or correction does not result in a net refund determination, jurisdictions could direct suppliers to account for amendments and corrections in the next VAT return due after the need or obligation to amend or correct the original return is established. Some jurisdictions, like Australia, require suppliers to state the full value of taxable supplies for the reporting period while allowing them to reduce or increase the corresponding amount of VAT payable by the value of the adjustment.

VAT returns under simplified compliance regimes could include a data field for suppliers to report the value of adjustments and also include a free-text field for suppliers to offer a brief explanation for the adjustments. Alternatively, the tax authority could develop a list of pre-determined summary explanations from which suppliers can select.

#### (iv) Vouchers and discounts

Vouchers and discounts are common features of online trade. Examples may include, but are not limited to, simple book tokens, gift vouchers, pre-paid cards and general electronic vouchers that consumers can purchase from specialised businesses. Many jurisdictions make a distinction in their VAT law between single-purpose and multi-purpose vouchers<sup>102</sup>. Although there may be some variations in the way that jurisdictions treat vouchers in their VAT law, many jurisdictions adopt the following approaches:

- Single-purpose vouchers are generally vouchers for which the issuer of the voucher will know both the VAT liability and the place of supply of the underlying goods or services in advance of the supply. As a result, jurisdictions may make the voucher issuers liable for VAT at the point of issue and at the point of individual transfer when the transfer involves consideration.
- Multi-purpose vouchers are generally vouchers that issuers do not designate for a single purpose and that consumers can redeem for a variety of goods or services. The place of taxation of the supplies that are paid for by means of a multi-purpose voucher may not be determinable until the consumer redeems the voucher – and these goods or services may be subject to a standard, a reduced, or a zero VAT rate or be exempt in the jurisdiction of taxation. Jurisdictions generally treat the exchange of multi-purpose vouchers as though they were the consideration for the supply and therefore apply VAT at the point where the consumer redeems the voucher, in full or in part, for the supply. In addition, at the end of a defined time period following purchase, jurisdictions may subject any remaining unused portion of the voucher to VAT at a standard rate, which issuers must account for by adjustment of their VAT returns in that jurisdiction.

Jurisdictions should carefully consider how they wish to treat these supplies and how other jurisdictions may assert their taxing rights, especially in relation to multi-purpose vouchers. This is necessary to provide certainty to non-resident suppliers that accept payments in voucher form and to minimise risks of double taxation and non-taxation.

Importantly, the jurisdiction where a voucher is issued may be different from the jurisdiction where the voucher is redeemed. International distribution chains for vouchers accentuate the risk of non-taxation due to lack of clarity in different jurisdictions' rules as to how suppliers should treat such voucher payments. Tax authorities may wish to engage directly with voucher issuers to establish measures to mitigate these risks.

Jurisdictions should also consider the appropriate treatment of certain types of discounts. Two common examples of discounts in online trade are as follows:

- Discount from a digital platform to an underlying supplier: digital platforms may provide volumetric or promotional discounts to underlying suppliers to promote suppliers' use of their platform. This will generally involve an arrangement purely between the platform and the underlying suppliers that sell via that platform. It will normally take the form of a reduction in the commission fee that the platform charges the underlying supplier and will not directly relate to the supply by the underlying supplier to its customers. Such a discount will thus normally not impact the VAT that is due on the supplies made by the underlying suppliers to customers in the jurisdiction of taxation.
- Discount from a supplier to a customer: a supplier can provide discounts to consumers to encourage higher levels of purchases and or to reward consumer loyalty. Such discounts directly reduce the total price that the consumer pays and will thus reduce the VAT liability on the supply to the customer in the jurisdiction of taxation (for the supplier or for the digital platform that has full

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<sup>102</sup> See the example for the United Kingdom's approach – HM Revenue & Customs, *VAT: treatment of vouchers from 1 January 2019* at <https://www.gov.uk/government/publications/changes-to-the-vat-treatment-of-vouchers/vat-treatment-of-vouchers-from-1-january-2019>.

VAT liability for such a supply under a jurisdiction's simplified compliance regime for non-resident suppliers).

***(v) Refunds in case of overpayment, corrections and product returns***

Although OECD guidance recommends that simplified compliance regimes be “pay-only” in nature, and thus not make input VAT recovery available to registrants under such a regime, circumstances may arise where a refund of VAT for these suppliers is warranted. Examples include, in particular, overpayments of VAT by suppliers and refunds made by suppliers after a product recall.

Jurisdictions should consider how to manage the process for providing such refunds from a practical standpoint, including relevant time limitations commensurate with those for domestic suppliers. Tax authorities will also need to undertake essential verification checks to ensure they are distributing funds to the appropriate entity and bank account.

***(vi) Treatment of customers' bad debts***

Jurisdictions should consider how they will manage issues relating to customers' bad debts. These issues may arise for suppliers when the consumer does not pay in full or in part for the supply, which may create the need for the tax authority to process a VAT refund to the supplier in accordance with its national VAT bad debt rules.

A specific issue may arise for digital platforms under a full VAT liability regime, where the customer pays the underlying supplier directly and the underlying supplier does not pay the platform its commission and/or the amount of the sale proceeds including the VAT due. New Zealand allows digital platforms to claim a bad debt deduction when a supply meets the following conditions:

- The platform and the merchant are not associated persons.
- The platform operator charges the merchant a fee for making the sale on its platform.
- The platform files a GST return for the taxable period during which it facilitated the sale and includes the sale and the amount of GST on the sale in the return.
- The customer pays the merchant directly for the supply, and the platform and the merchant have an agreement that requires the merchant to pay the platform an amount that includes the GST on the sale that the platform has accounted for in its return.
- The merchant fails to pay the platform the entire amount that it must pay the platform in relation to the sale.
- The platform has written off this entire amount as a bad debt, including its fee or commission on the sale. This prevents the platform from taking a bad debt deduction for the GST in the situation where it did receive some money from the merchant in respect of the transaction.

## 4C.2. The administration of full VAT liability regimes for digital platforms under a simplified registration and collection regime

### Guide to subsection 4C.2

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|         | <i>(i) Situations in which more than one digital platform facilitates a supply</i>  | 238  |

Subsection 3A.4 of this Toolkit outlines in detail the central role that digital platforms can play in the effective and efficient collection of VAT on the supplies that they facilitate for underlying non-resident suppliers. Section 3C of this Toolkit addresses specific and distinct elements of the sharing and gig economy that will affect the policy framework that jurisdictions may decide to adopt for digital platforms in this area of the digital economy. This subsection focuses on a number of specific aspects of the design and administration of measures imposing full VAT liability on digital platforms for such supplies under a simplified compliance regime.

A full VAT liability regime for digital platforms significantly enhances the effectiveness of VAT collection on supplies of services, intangibles and goods by non-resident suppliers to consumers in the taxing jurisdiction. This is because administering VAT obligations for a limited number of platforms that typically facilitate the vast majority of online sales by non-resident suppliers into a jurisdiction is much easier for a tax authority than administering VAT compliance for tens of thousands or hundreds of thousands, and potentially millions, of smaller businesses doing business through such platforms. Several jurisdictions, such as the European Union, Australia, New Zealand, Norway, Singapore and the United Kingdom have all in some form imposed full VAT liability regimes on digital platforms. These jurisdictions apply this regime to B2C supplies of services and intangibles by non-resident suppliers and most of them also apply it to collect the VAT on imports of low-value goods sold to final consumers or are preparing to do so.

Under a full VAT liability regime, a jurisdiction designates the digital platform (i.e. the operator of the platform) as the supplier for VAT purposes for all supplies that it facilitates for underlying non-resident suppliers to consumers in a jurisdiction. The platform has sole liability for accounting for, collecting and remitting VAT on such supplies in the taxing jurisdiction.

Before implementing a full VAT liability regime, jurisdictions are strongly advised to consult and engage with the platforms to understand their business models and on how such reforms will affect them. Such interactions can greatly assist tax authorities in designing the full VAT liability regime and in developing technical guidance to support platforms in complying with their obligations. It will also help tax authorities in developing their compliance risk management strategies.

#### 4C.2.1. Determining the digital platforms to which full VAT liability will apply

Digital platforms can generally be described as the platforms that enable groups of customers (typically buyers and sellers) to interact directly and to enter into transactions, through the use of information technology.

A digital platform will normally be able to take on the responsibility for collecting and remitting the VAT on the supplies it facilitates for underlying suppliers under a full VAT liability regime if:

- The platform holds or has access to sufficient and accurate information to make the appropriate VAT determination; and
- The platform has the means (is able) to collect the VAT on the supplies it facilitates for underlying suppliers.

A digital platform will normally be able to make the appropriate VAT determination and to collect and remit the VAT on the supplies by underlying suppliers under a full VAT liability regime if it performs certain critical functions, including at least one of the following<sup>103</sup>:

- Controls or sets the terms and conditions of the underlying supplies.
- Directly or indirectly authorises and processes payments for these supplies.
- Directly or indirectly participates in the delivery of supplies.

Tax authorities can use the list of functions described above as a basis for the development of more specific guidance on the digital platforms that they consider to be in scope of their full VAT liability regime.

Jurisdictions could further permit digital platform operators to voluntarily take on the VAT liability for underlying suppliers that make supplies through their platform in certain circumstances. The US National Conference of State Legislatures “model” platform legislation describes such an approach (US National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation, 2020<sub>[80]</sub>).<sup>104</sup> Many US states have adopted this model legislation, which provides:

*“Nothing shall prohibit the marketplace facilitator and the marketplace seller from contractually agreeing to have the marketplace seller collect and remit all applicable taxes and fees, provided the marketplace seller (1) exceeds a specified sales threshold; (2) provides evidence to the marketplace facilitator that it is registered to collect sales and use tax in the state; and (3) notifies the taxing authority of the marketplace seller’s obligation.”*

Jurisdictions could also consider permitting platforms to enter into agreements with underlying domestic suppliers to assume full VAT liability for supplies that the platforms facilitate for such domestic suppliers.

Finally, jurisdictions could also consider adopting a broader definition of a platform so as to encompass non-digital business models. For example, Australia’s platform rules apply equally to goods that customers order by telephone and New Zealand allows non-electronic platforms facilitating supplies of goods to register as a VAT-liable digital platform (marketplace) subject to the tax authority’s approval.

<sup>103</sup> For a practical example of how jurisdictions implement this approach to determining whether a digital platform performs critical functions within scope of a full liability regime, please see: EU Commission (2020), *Explanatory Notes on VAT e-commerce rules*, pages 17 to 21 at [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/vatecommerceexplanatory\\_28102020\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/vatecommerceexplanatory_28102020_en.pdf).

<sup>104</sup> It may be worth noting in passing that United States subnational platform legislation applies equally to foreign and domestic (US) digital platforms that are not resident or physically located in the particular US state.

#### **4C.2.2. Administering digital platforms with full VAT liability under a simplified VAT compliance regime**

OECD guidance recommends that jurisdictions make their simplified compliance regime accessible to digital platforms (in addition to non-resident suppliers) to carry out their VAT obligation under a full VAT liability regime. The rules and requirements that apply to non-resident suppliers under a simplified compliance regime can normally be applied equally to digital platforms on which a jurisdiction has imposed full VAT liability measures.

Some digital platforms, however, may prefer to register under the standard VAT regime so that they can claim input VAT relief. This may be because such platforms can have a physical presence in the jurisdictions to which they facilitate supplies, even if this presence encompasses only ancillary and logistics services (e.g. a fulfilment warehouse). This presence can help to facilitate engagement between platforms and tax authorities.

Tax authorities should publish detailed guidance material on how they will administer laws imposing full VAT liability on digital platforms. Several jurisdictions have published such guidance material<sup>105</sup> so that platforms and their advisors can comply with greater certainty and confidence.

##### **(i) Specific considerations on data reporting and record-keeping by digital platforms**

Platforms manage a significant amount of transactional information, including on the supplies they facilitate for underlying suppliers. It is normally not necessary to establish specific information reporting requirements for digital platforms under a full VAT liability regime. It would indeed be administratively too burdensome to require a systematic and regular reporting of a breakdown of all the supplies that platforms facilitate for underlying suppliers. Instead, it will generally be more efficient to restrict requests for such data to audit procedures targeted in particular at higher-risk platforms.

Tax authorities also may request such data to evaluate compliance. Requiring the identity of the underlying supplier in the transactional data sets that the platforms provide would permit further analysis of the major entities in the underlying supplier population.

Because of the volume of data sets that platforms produce, tax authorities should consider limiting the period for which they can be requested to provide data for analysis. As the data will be in electronic format, tax authorities need to be aware of any data limits on their email or other electronic communications gateways and have the capability to properly undertake transactional analysis processes to verify the data that the platforms report.

In general, regular and systematic bulk transactional data requests may not always be the most effective means for jurisdictions to monitor. Instead of requesting bulk transactional data for whole years or several months, tax authorities should focus on:

- Reduced periods initially, with
- Minimal data fields such as the seller's name, seller ID numbers, value of sale, product category and description

Tax authorities can then make more extensive data requests if they identify errors or concerns about the platform's records or their underlying suppliers for the period that are initially tested. Carefully constructed

<sup>105</sup> See Australian Taxation Office, *Law Companion Ruling - LCR 2018/2: GST on supplies made through electronic distribution platforms* at <https://www.ato.gov.au/law/view/document?docid=COG/LCR20182/NAT/ATO/00001>; Chilean Tax Administration, Circular N°42 at [https://www.sii.cl/normativa\\_legislacion/circulares/2020/circu42.pdf](https://www.sii.cl/normativa_legislacion/circulares/2020/circu42.pdf); Norwegian Tax Administration, *Guidelines – VAT on e-Commerce (VOEC)* at <https://www.skatteetaten.no/globalassets/bedrift-og-organisasjon/voec/guidelines---sell-charge-and-ship-goods-to-norway.pdf>.

data requests can provide immediately useful information for tax administrations without the requirement for more extensive data analysis to extract information. Section 5 and Annex G of this Toolkit provide guidance on data analysis tools and techniques for effective risk management.

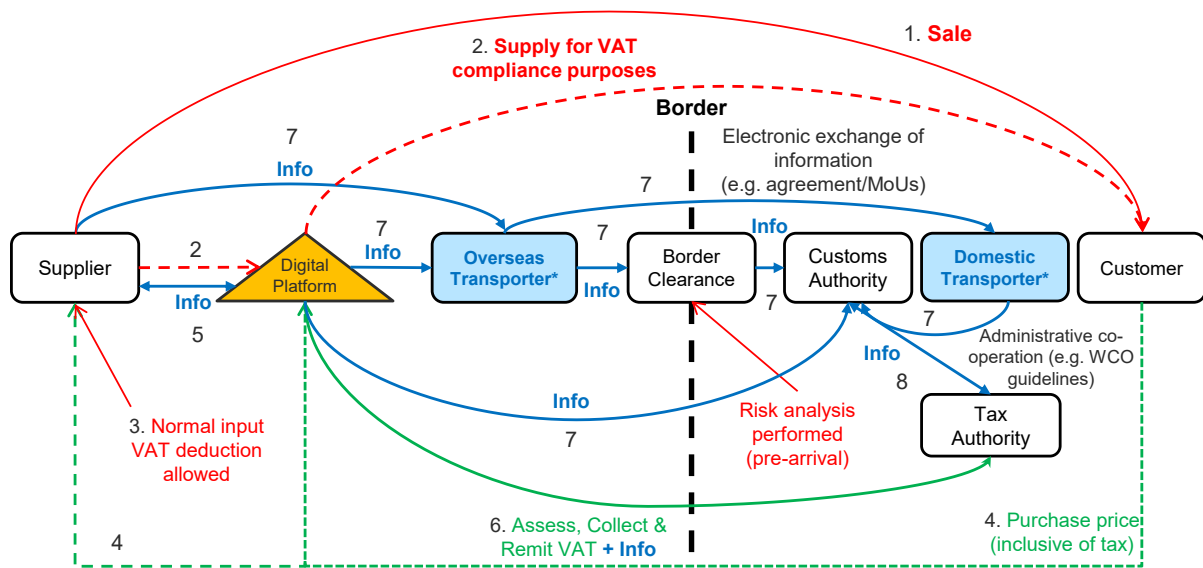
Digital platforms under full VAT liability regimes may frequently rely on information that underlying suppliers and other third parties provide them. Jurisdictions could consider rules that mitigate and limit liability for digital platforms that act in good faith and take all reasonable steps to capture accurate information through their usual business systems for the purpose of making correct taxing decisions (so-called “safe harbour” rules).

#### ***4C.2.3. Further guidance on full VAT liability regimes for digital platforms that facilitate international B2C supplies of low-value goods***

Subsection 4B.2 provides detailed guidance on the specific aspects of designing and operating a simplified compliance regime for non-resident businesses that supply low-value goods to final consumers in a jurisdiction. It explains that a jurisdiction must establish appropriate customs documentation and reporting requirements to support the operation of such a simplified compliance regime (Subsection 4B.2 and Annex E). This notably includes reporting to customs authorities on the VAT-settlement status (“VAT paid”) of imports of low-value goods, including via labelling of consignments that are declared for importation. Under a full VAT liability regime for digital platforms, it is important to note that underlying suppliers will continue to have a vital role in labelling low-value goods consignments and providing key information to transporters and customs authorities to facilitate clearance. This includes in particular providing the VAT registration number of the digital platforms on consignment packaging to enable customs authorities to verify that a platform collected VAT at the time of supply.

Tax and customs authorities should work together to ensure the operational compatibility of customs processes with full VAT liability regimes. These efforts should focus on ensuring that digital platforms and suppliers are fully aware of their customs reporting obligations to minimise the necessity for customs authorities to assess low-value goods for VAT at the time of importation. The following flowchart shows the flow of information and transactional processes that characterise supplies of goods through digital platforms under full liability regimes.

**Figure 4C.1. Full VAT liability regime for digital platforms – Operation for imports below the customs duty relief threshold**



— The actual information flow could differ (e.g. supplier can directly provide information to overseas transporters or the digital platforms can provide information received from the supplier to overseas transporters). Digital platforms could be also asked to provide information directly to the customs authority.

— The actual flow of payment could differ according to the arrangements in place between the underlying supplier and the digital platform.

\*Overseas/domestic transporters include postal operators and express carriers.

Note: the sequence of numbers assigned in the figure is for identification only; it is not intended to indicate the timing of a specific step in chronological order.

Source: OECD (2019), *The Platforms Report* (OECD, 2019<sub>[3]</sub>).

If digital platforms and suppliers do not successfully coordinate and execute their respective responsibilities for customs reporting, then customs authorities may hold goods up at the border and subject them to traditional import VAT assessment, creating a risk of double taxation, administrative burdens and costs for consumers.

Norway, New Zealand and Australia all require underlying suppliers to include a digital platform's VAT registration number on package labelling where the platform has full liability for an international B2C supply of low-value goods. This indicates to customs authorities that the platform is VAT-registered and has collected VAT on the consignment at the time of supply. Tax and customs authorities could subject a platform to audit procedures if they consider it to be a compliance risk. Customs and tax authorities can check the bona fide nature of this information at any time. Annex E describes these approaches to customs reporting in detail.

### **(i) Situations in which more than one digital platform facilitates a supply**

Jurisdictions should consider circumstances where more than one digital platform participates in facilitating a supply and establish a hierarchy for determining which entity should take responsibility for VAT collection under a full VAT liability regime in such circumstances.

A possible approach could be designed according to the following principles:

- Only one digital platform should in principle be responsible for VAT on a supply involving more than one platform under a full VAT liability regime.<sup>106</sup>
- Digital platform operators may agree among themselves through a written agreement which operator will assume the role of supplier for VAT purposes.
- When there is no agreement between the different platform operators, default rules can apply whereby the first of the platform operators to receive or authorise the charging of any of the consideration for the supply becomes responsible for VAT.
- In the event that none of the operators meets this criterion, the responsible platform will be the first one that authorises delivery of the supply.<sup>107</sup>

### 4C.3. The role of tax agents and intermediaries other than digital platforms under a simplified registration and collection regime

#### Guide to subsection 4C.3

| Section | Theme   | Page |
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| 4C.3.2. | <i>Commercial intermediaries that take on contractual liability for VAT compliance on behalf of a non-resident supplier</i> | 241  |
| 4C.3.3. | <i>Deeming an intermediary, other than a digital platform, as responsible for VAT collection</i>                            | 242  |
|         | <i>(i) Deeming “redeliverers” responsible for VAT collection on international B2C supplies of low-value goods</i>           | 242  |
| 4C.3.4. | <i>Local fiscal representatives</i>   | 243  |

Non-resident suppliers may opt to use the services of a variety of intermediaries (other than digital platforms) to either assist or act on their behalf in complying with their VAT obligations. The decision to use intermediaries may arise because of commercial preferences or for legal reasons (for instance where suppliers adopt distribution arrangements with third parties to serve a specific region or jurisdiction). For some businesses trading across international borders, especially for small- and medium-sized enterprises, it simply may be more practical to use the services of intermediaries to comply with their VAT obligations abroad due to the challenges of building and maintaining in-house expertise to directly manage all of the tax obligations in every jurisdiction into which they make sales. Specialised service providers increasingly offer compliance services for VAT and other taxes in many jurisdictions. This is often an attractive option

<sup>106</sup> See for instance Australian Taxation Office, *Law Companion Ruling - LCR 2018/2: GST on supplies made through electronic distribution platforms* at <https://www.ato.gov.au/law/view/document?docid=COG/LCR20182/NAT/ATO/00001>.

<sup>107</sup> Similar to Australia’s approach, New Zealand’s rules on prioritisation of GST collection responsibilities provide that the first digital platform that authorises a charge or receives payment for the supply will be responsible. If none of the platforms involved meets this requirement, the first operator that authorises delivery would have responsibility.

for companies with multi-jurisdictional tax exposure but limited in-house capacity to manage VAT-compliance processes for all the jurisdictions into which they make sales.

OECD guidance recognises that “compliance for foreign suppliers could be further facilitated by allowing such suppliers to appoint a third-party service provider to act on their behalf in carrying out certain procedures, such as submitting returns. This could be especially helpful for small and medium enterprises and businesses that are faced with multi-jurisdictional obligations”.<sup>108</sup>

This subsection focuses on a number of administrative considerations for the treatment of such intermediaries, other than digital platforms, under a simplified compliance regime for non-resident suppliers. It considers the roles of intermediaries, other than digital platforms, in the following contexts:

- Where a non-resident supplier employs a third-party service provider to assist in meeting its compliance obligations. This includes cases in which third-party providers assist with administrative tasks, such as VAT calculation and remittance, return filing and record-keeping but liability remains contractually with the non-resident supplier. These services can help businesses, especially small and medium-sized businesses, comply with their VAT obligations for example in light of the various global VAT rates and low-value consignment relief thresholds for low-value goods.
- Where a non-resident supplier enters into a commercial contractual arrangement whereby a commercial intermediary assumes contractual liability for VAT compliance, incl. VAT payment, on behalf of the supplier. This could for example include cases where a non-resident online supplier enters into an agreement with an online distributor to offer and distribute the supplier’s products via its distribution network, and whereby the distributor agrees to take on the VAT compliance responsibility in respect of the supplies it makes on behalf of the non-resident supplier.
- Deeming a type of intermediary to be liable (“redeliverers”).
- Appointment of an intermediary to act as a local fiscal representative.
  - Historically, requirements to appoint local fiscal representatives have been used by VAT-systems to ensure compliance by non-resident businesses with their VAT obligations.
  - OECD guidance recommends that no requirement for a local fiscal representative be required under a simplified compliance regime.
  - The mandatory appointment of a local representative is likely to result in non-resident businesses, particularly small and medium-size businesses, choosing to withdraw from a jurisdiction that imposes these requirements and in an increased risk of non-compliance and associated VAT revenue losses. This is notably because non-resident businesses will in practice often face challenges in engaging a local representative that would be willing to be held solely or jointly liable for any VAT liability. The services of a local representative that is willing to take on such responsibility are likely to be costly.

Some LAC jurisdictions operate systems where financial services providers play a role in the collection of VAT (e.g. Argentina, Colombia, Costa Rica). While financial intermediaries may offer intermediary services to help businesses comply under the simplified compliance regime, they will generally not hold all relevant information needed to efficiently and effectively take on the full liability to collect and remit the VAT on internationally traded services, intangibles and low-value goods. A financial intermediary withholding requirement as a fallback option in cases where a non-resident supplier does not comply with its VAT-obligations under a simplified compliance regime, as notably provided for in Chile and Colombia’s VAT legislation, could however be helpful in stimulating and enforcing compliance by non-resident suppliers. Subsections 3B.2, 4A.1.4 and 4B.1.3 all outline the position of the Toolkit on the policy and administrative elements that affect how effective a role financial intermediaries can play in VAT collection in an international B2C context. In addition, Annex B provides a more in-depth analysis of why financial

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<sup>108</sup> The Guidelines, C.3.3.8. Use of third-party service providers.

intermediary withholding regimes may not be suitable as the primary mechanism for collection of VAT on international B2C supplies into a jurisdiction.

#### **4C.3.1. Compliance facilitation services by specialised third-party service providers**

With the development and implementation of OECD guidance across numerous jurisdictions, traditional service providers such as accounting, legal, payment and software service providers, have expanded their offerings to assist non-resident businesses in their efforts to comply with jurisdiction's VAT rules. In addition, specialised international third-party providers have emerged to provide services to assist non-resident businesses to comply with their new multi-jurisdictional VAT obligations thereby benefitting tax authorities. By representing many businesses across multiple jurisdictions, these providers often have a higher level of understanding of each jurisdiction's rules than do individual businesses. This is likely to lead to more consistent practices, to increase compliance levels and reduce compliance burdens and administrative costs.

While many larger non-resident businesses may prefer to directly manage all aspects of their interactions with tax authorities, others may instead prefer to use third-party service providers to assist with administrative tasks, such as VAT calculation and remittance, return filing and record-keeping. The contractual VAT liability normally remains with the supplier under such arrangements.

In reflecting on the design of a registration, reporting and payment portal, jurisdictions may consider the option of allowing third-party service providers to establish their own electronic identity credential and link to their client's online account so that they can more easily undertake these functions on their client's behalf. This may first require the non-resident business to register in its own name and establish its own credentials before granting access to its third-party representative.

#### **4C.3.2. Commercial intermediaries that take on contractual liability for VAT compliance on behalf of a non-resident supplier**

A non-resident supplier may have entered into a commercial agreement with a third party whereby the third party agrees to assume contractual liability for VAT compliance, including VAT payment, on behalf of the non-resident supplier as part of the contractual arrangement. The reasons why businesses may wish to enter into such contracts are manifold. It is common in online trade, for example, for online suppliers to outsource their customer-facing processes in a certain market to e-commerce intermediaries that may be specialised in that market and that provide a full suite of services, including communication with consumers and secure electronic delivery. These commercial arrangements may also include an agreement whereby the commercial intermediary takes on the responsibility for VAT compliance on behalf of the non-resident supplier. Such a contractual arrangement may (often) not be known to the tax authority in the taxing jurisdiction.

A commercial intermediary acting on behalf of a non-resident supplier as described above will, in practice, often be a digital platform that will be subject to full VAT liability obligations under the taxing jurisdiction's simplified compliance regime (see subsection 4C.2 above). Where this is not the case, or where a jurisdiction has not implemented such a full VAT liability regime, the contractual arrangement between a non-resident supplier and the third party should in principle not affect the VAT-liability of the non-resident supplier towards the tax authorities in the taxing jurisdiction. The non-resident supplier will normally remain responsible for its VAT-obligations in accordance with the rules of the taxing jurisdiction, even though it may have contractually agreed with a third party to assume responsibility for carrying out these obligations on its behalf. This is no different from the arrangement whereby a third-party service provider carries out compliance tasks for a non-resident supplier as outlined above.

Tax authorities could consider allowing such commercial intermediaries to take on the full liability to account for the VAT for the supplies made by the non-resident supplier in the jurisdiction and to comply

with all the associated VAT obligations. Tax authorities may wish to limit such a treatment to commercial intermediaries with a good compliance record and/or with a low-risk compliance status. Such a treatment could be subject to the condition that the full content of the commercial agreement between the non-resident supplier and commercial intermediary is disclosed to the tax authority with the requirement to inform the tax authority promptly of any changes to these arrangements. The tax authority would need to be satisfied that the intermediary is fully capable of complying with all requirements for non-resident suppliers under a simplified compliance regime, including that:

- It is either in possession of the information needed to make the appropriate taxing decision and meet compliance obligations under the simplified compliance regime, including in respect of refunds to customers, adjustments and amendments, or that it can readily access that information. This includes appropriate controls for determining the status (private consumer or business) and location (usual residency or permanent business establishment) of the customer of the non-resident supplier,
- It has access to the relevant accounting data, software systems and records to facilitate any tax authority request for information.

#### **4C.3.3. Deeming an intermediary, other than a digital platform, as responsible for VAT collection**

This Toolkit recommends that jurisdictions implement a full VAT liability regime for digital platforms under a simplified compliance regime for the supplies they facilitate for non-resident suppliers. Many jurisdictions have implemented such a regime for supplies of services and intangibles by non-resident suppliers and, increasingly, for the collection of VAT on imported low-value goods that are supplied by non-resident suppliers. Subsection 4C.2 above discusses important elements of developing the administration for such measures, while Sections 3A and 3B analyse full VAT liability regimes for digital platforms from a policy and legislative design perspective. This subsection will not repeat these analyses and instead focuses on another type of intermediary, which a number of jurisdictions have referred to as “redeliverer” businesses.

##### ***(i) Deeming “redeliverers” responsible for VAT collection on international B2C supplies of low-value goods***

Australia and New Zealand have implemented rules that assign VAT liability for B2C supplies of low-value goods by non-resident suppliers to so-called “redeliverer” businesses in certain specific circumstances.

Consumers can use the services of a “redeliverer” to buy products (goods) that they may struggle to buy locally or through online channels that serve their jurisdiction. These consumers can purchase these products from a non-resident (online) supplier and ask this supplier to deliver the purchased items at a delivery address that is the collection point of a “redelivery business”. This business then organises the delivery of these products to the consumer. Subject to certain conditions, such a “redeliverer” is treated as fully liable for the VAT on the low-value goods it delivers to final consumers under Australia’s and New Zealand’s simplified compliance regime for supplies of low-value goods by non-resident suppliers. This will apply only as a fallback rule when neither the supplier nor a digital platform or any other party acting on behalf of the supplier or digital platform (e.g. a transporter) transports or assists in transporting the goods to the jurisdiction.

“Redeliverers” are defined under these rules as businesses that offer an “offshore or foreign mailbox service” or a “shopping service”.

- An offshore/foreign mailbox service is where a business provides customers with an address in a foreign jurisdiction to which the customer can send orders of goods. The “redeliverer” will then arrange for the delivery of the goods to the address at which the customer would like to receive them.

- A shopping service is a service in which a business purchases, or assists in purchasing, goods from a foreign jurisdiction for a customer, effectively acting as an agent of the customer.

The “redeliver” regime is essentially designed as a fallback rule. Under such a rule, a “redeliverer” is only fully liable for the VAT on the supply of low-value goods to final consumers under a simplified compliance regime, when it acts at the instruction of the consumer. When a “redeliverer” acts on the instruction of a supplier or a digital platform, then the supplier or the platform remains liable for the VAT under the normal rules of the simplified compliance regime. In practice, the following hierarchy applies for determining the responsibility to collect and remit VAT on B2C supplies of low-value goods by a non-resident supplier under a simplified compliance regime:

- Where a digital platform meets the criteria for full VAT liability (and has no right to transfer it to the underlying non-resident supplier), it will have responsibility for the VAT on the supply.
- Where full VAT-liability for a digital platform does not apply (e.g. a non-resident supplier that supplies directly to consumers without the intervention of a digital platform), the non-resident supplier will have responsibility for the VAT on the supply if this supplier meets the criteria for VAT-liability under the simplified compliance regime.
- “Redeliverers” can be responsible for the VAT on the supply only when the two preceding conditions do not apply.

“Redeliverers” that have VAT-liability under these rules are normally able to register and collect VAT under the same simplified compliance regime as non-resident suppliers and digital platforms. The liability of “redeliverers” is restricted to B2C supplies by non-resident suppliers only. Transporters are not generally considered as “redeliverers” in practice, because they normally act as agents of a supplier or digital platform and not of customers. They also generally do not provide offshore mailbox or shopping services, although some may explicitly and separately also provide services that mean they meet the definition of a “redeliverer”.

#### **4C.3.4. Local fiscal representatives**

Jurisdictions historically have often required non-resident suppliers to appoint a fiscal representative who is a resident or has an establishment within the jurisdiction to collect and remit the VAT on their supplies. This was particularly common in the past, when such international transactions were relatively limited in number and individual transactions involved relatively high amounts. The requirement to appoint such a fiscal representative may be motivated by a range of policy considerations such as the jurisdiction's limited capacity in digital tax administration, the fiscal representative's understanding of local language and of national laws and its easier access to accounting and other documentation.

Notwithstanding the potential of such a fiscal representative to facilitate tax collection and enforcement, the mandatory nature of such an appointment may result in unintended consequences. Non-resident suppliers facing the obligation to appoint such a person in the taxing jurisdiction may decide to restrict their trade with that jurisdiction or inadvertently fail to comply with the rules of the taxing jurisdiction, particularly when sales for relatively low amounts and/or with relatively small profit margins are involved. For a small business with a modest turnover in the taxing jurisdiction, the cost of maintaining a fiscal representative there may be disproportionate to its revenue, particularly in cases where the fiscal representative shifts the financial risks of non-compliance to the non-resident supplier by requiring it to post security. Suppliers may also have significant difficulties in engaging a representative that would be willing to assume such a role in cases where it would be solely or jointly liable for any VAT liability of the non-resident supplier.

It is therefore recommended that jurisdictions do not require the appointment of a local fiscal representative under a simplified compliance regime for non-resident suppliers. The overall simplicity and mitigation of fraud risks that are inherent in the design of simplified VAT registration and collection regimes effectively remove the need for a local fiscal representative.

## 4C.4. Communication strategies for engaging non-resident suppliers and digital platforms

### Guide to subsection 4C.4

| Section | Theme  | Page |
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| 4C.4.1. | <b>Key features of a comprehensive communications strategy to implement change</b>   | 244  |
|         | <i>(i) Identifying the target audience of the tax authority's communication efforts: Non-resident suppliers, digital platforms and other relevant stakeholders</i> | 245  |
|         | <i>(ii) Communicating effectively during all the phases of design, implementation and operation</i>  | 246  |
| 4C.4.2. | <b>Identifying non-resident businesses, digital platforms and other relevant stakeholders at which a simplified compliance regime will be targeted</b>             | 247  |
| 4C.4.3. | <b>Lead-in time to ensure effective communication and proper implementation for tax (and customs) administrations and for non-resident suppliers</b>               | 249  |
| 4C.4.4. | <b>Dealing with unresponsive stakeholders and instances of deliberate non-compliance</b>   | 249  |

A comprehensive communications and engagement strategy is the cornerstone of compliance. A strategy that encompasses consultation, outreach, technical and systems guidance, education and awareness is likely to significantly facilitate and enhance compliance by non-resident suppliers.

Even though jurisdictions will strive for consistency in the design of their simplified compliance regimes for non-resident suppliers, one size does not fit all and variations will undoubtedly occur. Tax authorities are thus encouraged to effectively communicate the obligations under simplified compliance regimes to non-resident suppliers. This should include communication well in advance of the introduction of a simplified compliance regime, to allow non-resident suppliers to make the necessary changes to their compliance systems and procedures that will be essential to compliance.

#### **4C.4.1. Key features of a comprehensive communications strategy to implement change**

Tax authorities are advised to develop a staged communication strategy that allows them to break down their communication into relatively simple messages delivered in a phased approach. The following main phases can be distinguished:

- An awareness phase, to communicate a jurisdiction's intention to implement reform that will include an obligation for non-resident suppliers to register and to collect and remit the VAT in that jurisdiction under a simplified compliance regime, inviting businesses to review whether this reform will impact them.
- A preparation phase, informing affected non-resident businesses on the process for registration under the simplified compliance regime and on their VAT-obligation under that regime so that they can implement the necessary change into their internal processes and systems to ensure compliance.
- An action phase to announce that the new regime will shortly take effect and that the affected non-resident businesses should finalise arrangements to comply.

- A follow-up phase commencing after the start date of the new regime to inform businesses that have not registered on how they can transition to compliance (OECD, 2019<sup>[57]</sup>).

The following subsections consider specific key features of a successful communications strategy in further detail. Jurisdictions that may have limited capacity to develop and implement a comprehensive communications strategy may wish to consider the components outlined below that are likely to be most efficient in allowing them to reach out rapidly and effectively to the main non-resident businesses at which their simplified compliance regime will be targeted. Experience suggests that the assistance of international and regional organisations and representative bodies, as outlined below, is likely to be particularly useful for tax authorities with limited administrative capacity.

***(i) Identifying the target audience of the tax authority’s communication efforts: Non-resident suppliers, digital platforms and other relevant stakeholders***

The design and implementation of a simplified compliance regime for non-resident suppliers will greatly benefit from early research by the tax authorities to identify the main non-resident suppliers and other stakeholders that are likely to be affected by this reform. The identification of these stakeholders will notably provide a good basis for a well targeted and effective communications strategy. Subsection 4C.4.2 provides further detail on available approaches and data sources to identify the main non-resident businesses that may be subject to compliance obligations under a jurisdiction’s simplified registration and collection regime for non-resident suppliers.

Stakeholders other than non-resident suppliers that are likely to be affected by the implementation of a simplified registration and collection regime include:

- Digital platforms that will have compliance obligations under a full VAT liability regime.
- Software developers/providers, including of accounting and tax compliance software.
- Tax compliance service providers, including accounting firms and law practices.
- Specifically, in the area of imported low-value goods and supplies by non-resident suppliers, important stakeholders will include the postal services, express couriers, freight forwarders, customs brokers, and bonded warehouse operators both domestically and internationally.

These non-resident suppliers and stakeholders, particularly the large online businesses and digital platforms that dominate international e-commerce, are normally represented in a range of international and regional organisations and representative bodies in which they participate actively. Engaging with these organisations and representative bodies will greatly assist tax authorities in identifying the main non-resident businesses and stakeholders that are likely to be affected by the reform and to engage with these actors already from an early stage in the design and implementation process. Engaging with these organisations to reach the main non-resident businesses and other stakeholders quickly and effectively is likely to be useful particularly for jurisdictions that may have limited capacity to develop a comprehensive communication strategy. These organisations may include:

- “Business at the OECD”, which is the OECD’s official partner in engaging with the global business community and through which an extensive network of key stakeholders in international e-commerce has been developed for use by tax authorities.
- The World Customs Organization (WCO), the Universal Postal Union (UPU) and the Inter-American Center of Tax Administrations (CIAT) are also likely to be able to assist in reaching out to a wide range of relevant stakeholders.
- International Mailers Advisory Group
- Global Express Association
- Latin American Conference of Express Carriers (CLADEC)
- ALACAT (Latin American Freight Forwarders Association)

- Mercosur (The Southern Common Market)
- CARICOM (The Caribbean Community)

***(ii) Communicating effectively during all the phases of design, implementation and operation***

To maximise the effectiveness of their communications strategy to support the design, implementation and operation of a simplified compliance regime for non-resident suppliers, tax authorities are advised to consider the following approaches:

- Ensure early communication and consultation with non-resident businesses and other stakeholders that are likely to be affected by the reform, during the policy development and the design and implementation phase. This will not only raise early awareness, but also assist the tax authority in designing the reform to maximise compliance, in identifying the information needs of the affected businesses and in developing a communications strategy that will be most effective in addressing these information needs.
- Use of multi-channel media strategies to achieve greater coverage and awareness, including the use of social media (e.g. LinkedIn), media releases, presentations to representative organisations and forums and the provision of communication material that can be used by a wide range of organisations and stakeholders (e.g. international advisory firms). Standard forms of tax administration communication should also be considered.
- Provide easy-to-access comprehensive web guidance for non-resident businesses through a standalone page on the tax administration's website, which provides direct access to simple-to-use guidance on the operation of the simplified compliance regime for non-resident suppliers and on their obligations under this regime. This guidance should provide linkages to the online portal through which non-resident businesses will be required to register and comply with their obligations under the simplified compliance regime, and to any supporting technical guidance. The guidance should also provide advice for digital platforms and intermediaries that clearly explains their responsibilities under the regime.
- Careful consideration should be given to the development of key words and phrases ("metadata") so that Internet search engines are able to best direct potential registrants to the right information on the tax authority's website. This should include terms that are commonly used by potential registrants. For example, it will be useful to complement local terminology (such as *Impuesto al Valor Agregado* or IVA) with terms like VAT or value added tax, GST or goods and services tax, sales tax, and other terms that are widely used around the world.
- Tax authorities are strongly advised to make some, or all, of their communication and guidance material available in English and in the language(s) of the jurisdiction's main trading partners, in addition to the jurisdiction's local language(s).
- Develop and taxpayer assistance channels, including the provision of a dedicated email channel for non-resident businesses and/or phone numbers to a dedicated call centre with appropriate guidance for call centre operators (including standard questions and answers, and escalation channels). Appropriate security protocols should be applied when electronically corresponding or talking with non-resident businesses, especially in relation to their account that may require alternate proof of identity checks.
- Internal communications and training for staff in the tax authority are, of course, required to directly support clients and administer the regime.

A number of jurisdictions have undertaken a broader range of communication actions that may be useful to consider. These include the following

- One-to-one letter campaigns, targeted at the main non-resident suppliers, digital platforms and other stakeholders that are likely to be subject to registration obligations under the simplified compliance regime. A link to the web address for the simplified compliance regime can be included in these letters.
- Partner with stakeholders to host webinars to deliver presentations about the reform and to allow non-resident businesses to ask questions. Large accounting firms and other intermediaries may be willing to co-host webinars for their clients, which would enable tax authorities to communicate their messages more widely. International and regional multilateral organisations can play an important role in facilitating such communication efforts, including the World Bank Group, the International Monetary Fund (IMF), the Inter-American Center of Tax Administrations (CIAT) and the Inter-American Development Bank (IDB), as well as the OECD.
- Use of external public relations service providers to develop an international public relations campaign whereby key messages are placed in appropriate international media and industry publications to promote awareness and understanding of the changes and businesses' obligations.

#### **4C.4.2. Identifying non-resident businesses, digital platforms and other relevant stakeholders at which a simplified compliance regime will be targeted**

An effective communication plan for the implementation of a simplified compliance regime requires early identification of the main non-resident businesses and/or categories of businesses and other stakeholders (digital platforms, transporters, redelivery services, etc.) that are likely to be affected by this reform. Businesses that receive early communications have more time to plan and be in a better position to modify their systems to assure compliance.

Various information sources can be considered to identify these relevant businesses and other stakeholders as set forth in the table below.

**Table 4C.1. Potential data sources and other types of information to assist tax authorities in identifying non-resident businesses in scope of a jurisdiction's simplified compliance regime**

| Source  | Data   | Limitations  | Opportunities   |
|---|--|--|---|
| <b>Financial institutions and/or credit card companies/networks</b>                     | Transactional data for payments made to non-resident suppliers.  | The data may be unrefined and may require significant manipulation to create meaningful information.       | Transactional data can be analysed to support audit and enforcement actions.  |
| <b>Registration lists held by other jurisdictions with a similar regime<sup>1</sup></b> | List of non-resident suppliers registered under a similar VAT regime in other jurisdictions.                               | Only some jurisdictions maintain a public register (e.g. Japan, Russia, and Norway). Regimes might differ. | Utilisation of exchange-of-information provisions in tax treaties and/or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) may need to be explored to obtain information. |
| <b>Internet profiling</b>   | Search engine results that identify non-resident businesses supplying services/products to customers in your jurisdiction. | Manual process (e.g. search "Subscription TV Services"). Resource intensive.                               | Can provide detailed contact information for enhanced communication and engagement strategies.  |

| Source  | Data  | Limitations  | Opportunities   |
|---|---|--|---|
| <b>Website scraping</b>                                     | Extraction of dynamic data from websites to identify the global and regional ranking of a website based on the number of visits made by Internet users. E.g. “Alexa” or “SimilarWeb”. | Data are limited to website visits (traffic) rather than value of sales to customers in the jurisdiction.  | Commercially available. May still be more efficient than using own resources. Will identify the top websites, by category, being used by Internet users in your jurisdiction. |
| <b>Third-party commercial data solutions</b>                | These entities mine data from banks and other sources and analyse it to publish economic reports.   | Normally fee-based.<br>May be provided under restricted terms and conditions.  | Can identify the main non-resident (online) suppliers, by category, selling to customers in your jurisdiction.  |
| <b>“Financial Intelligence Units” reports<sup>2</sup></b>   | Identify international funds transfers.   | May not capture all credit card payments.  | A search by entity name can reveal both aggregate and full transactional data for a particular non-resident supplier to which payments were made.                             |
| <b>Businesses’ published financial reports and websites</b> | Company financial reporting.  | May include aggregated data on total international sales.  | Can provide insight into the nature of the business and sales volumes. Can provide details of business address and key contacts.  |
| <b>Exchange of information (EOI) provisions</b>             | Provides a legal framework for tax jurisdictions to co-operate across borders (MAAC, tax treaties, regional frameworks for administrative co-operation).                              | Can be time consuming.<br>Instruments may not provide a sufficient legal basis to respond to information request (subject to limitations, reservations). | May provide a legal basis for obtaining lists of non-resident suppliers registered under simplified compliance regimes in other jurisdictions.                                |

1. The decision whether to publish the names of non-resident suppliers and platforms on a VAT register should consider the benefits and risks of such an approach. The provision of public lists may incentivise business to register. However, providing too much information (such as the Tax Identification Number) might be incompatible with privacy laws and provide opportunity for fraud by the incorrect provision of compliant suppliers’ numbers by unregistered suppliers for the purposes of making a consignment to appear to be VAT-paid (see subsection 4C.1.1.(iv)).

2. The Egmont Group maintains a list of such “Financial Intelligence Units”. Please see:

The Egmont Group, List of Members at <https://www.egmontgroup.org/en/membership/list>

Source: OECD research.

Early adopters of simplified compliance regimes for non-resident suppliers carried out Internet profiling and used other available third-party data to help identify those non-resident businesses that would likely fall within the scope of the regime. Existing customs data have also been used to identify the main non-resident businesses making online sales of low-value goods to local consumers.

Credit card data and other financial data on payments made to non-resident suppliers will normally already be available in the LAC jurisdictions that have implemented a financial intermediary withholding regime to collect the VAT on supplies by non-resident suppliers. Such data are likely to assist these jurisdictions in identifying the non-resident businesses that will normally be in scope of a simplified registration and collection regime targeted at non-resident suppliers.

Jurisdictions have also used lists available from commercial data web scraping entities that detail the top websites (by category) used by customers. Although this does not necessarily prove that there is a VAT obligation, it can assist in the modelling of businesses that will be required to register under a simplified compliance regime and will help with the targeting of communications.

When viewed collectively, the data collected through the various sources listed above provide a comprehensive picture of the non-resident businesses that are likely to have an obligation to register under a simplified compliance regime for non-resident suppliers.

#### ***4C.4.3. Lead-in time to ensure effective communication and proper implementation for tax (and customs) administrations and for non-resident suppliers***

Having an appropriate lead-in time for the introduction, or the extension (e.g. to imports of low-value goods), of a simplified registration and collection regime for non-resident suppliers is important for both tax (and customs) administrations and non-resident suppliers, to ensure proper communication and consultation and to allow for the necessary changes to compliance and administration systems and processes.

A lead-time of 6-12 months between adoption of the reform and entry into force is considered appropriate for VAT reform directed at online sales of services and intangibles. A lead-time of 12-18 months is generally considered appropriate for VAT reform targeted at imports of low-value goods. Close alignment with the recommended OECD framework can considerably shorten these lead times, as online businesses and tax authorities can leverage solutions and technology that has already been implemented in jurisdictions that have adopted a similar approach.

Tax administrations will need this time not only to develop a communications plan that details the changes to the law but also to design, build and implement the simplified registration and collection system.

For non-resident suppliers and digital platforms, this time will be needed for changes to compliance systems and commercial processes. Digital platforms will need to communicate the changes to their underlying suppliers so that all participants in the supply chain understand their obligations in supporting compliance by the platform. In respect of imported low-value goods, this will notably help to ensure that processes are changed to properly identify “VAT-paid” low-value goods by customs authorities at the time of importation and allow an enhanced facilitation of clearance of the goods in respect to the VAT status of the consignment(s).

#### ***4C.4.4. Dealing with unresponsive stakeholders and instances of deliberate non-compliance***

In the case of unresponsive stakeholders and for instances where it is suspected, or proven, that there has been deliberate non-compliance, reasonable steps should be taken to engage and seek compliance. Further discussion about risk and compliance is addressed in Section 5.

## **Section 4D. Operational and Information Technology Infrastructure for a Simplified VAT Registration and Collection Regime**

## Key messages

### Background and general overview:

Section 4A of this Toolkit provides guidance on the administrative and operational implementation of the recommended policy framework for the collection of VAT on supplies of services and intangibles by non-resident suppliers. It provides guidance on project management and on the administrative implementation of the specific recommended policy approaches that apply to supplies of services and intangibles by non-resident suppliers.

Section 4B builds further on the guidance provided in Section 4A, focusing on the administrative and operational implementation of the recommended policy framework for the collection of VAT on imports of low-value goods. This reflects the recommendation for a sequenced implementation of the recommended policy framework for the collection of VAT on digital trade, focusing first on online sales of services and intangibles and subsequently on imports of low-value goods from online sales.

Section 4C provides detailed guidance for the design of a simplified VAT registration and collection regime for non-resident suppliers, which applies both to supplies of services and intangibles and to the imports of low-value goods.

This Section 4D complements the guidance in Section 4C with detailed analysis and guidance on the implementation of the central operational and IT infrastructure that supports a simplified VAT registration and collection regime for non-resident suppliers. Jurisdictions will significantly benefit from utilising the same central operational and IT infrastructure to support compliance obligations for all taxable supplies by non-resident suppliers under a simplified compliance regime, be it supplies of services and intangibles or supplies of low-value goods. At the core of this central IT infrastructure is an online portal that enables non-resident suppliers to complete virtually all aspects of VAT compliance for in-scope supplies exclusively by electronic means.

**Section 4D of the Toolkit explores the development of an online portal for a simplified compliance regime for non-resident suppliers in greater depth as well as the development of the broader operational and IT infrastructure to support the operation of such a regime. The main aspects covered in Section 4D and the associated guidance can be summarised as follows:**

- **Project governance and management:** A project-based approach is recommended for the development of the operational and IT infrastructure that is necessary to support the implementation of the simplified VAT compliance regime for non-resident suppliers, with an appropriate governance structure to ensure proper project management and project delivery.
- **Core functionalities of the online portal for a simplified compliance regime:** The online portal for a simplified VAT compliance regime for non-resident suppliers should at a minimum include the following functionalities:
  - Simplified registration by non-resident suppliers
  - Filing of VAT returns through secure online forms and facility for the secure uploading of supporting information
  - Payment of VAT due via the online portal or a robust process for managing external payments
  - Updating and amending suppliers' key registration and account details
- **Additional elements to consider in the development and the operation of an effective and secure online portal:**
  - Using secure channels for hosting the online portal and facilitating communications. It is highly recommended that the login page to the simplified registration and collection portal be hosted on the tax authority's existing website rather than creating a standalone Internet address.

- Configuring the portal to enable all activity and functions also in English and in the languages of the jurisdiction's main trading partners.
- Facilitating the use of Application Programming Interfaces (APIs), which enable the direct and automatic communication between the supplier's accounting and record-keeping system and the tax administration's systems to support compliance under the simplified compliance regime (e.g. to calculate VAT liability).
- Data storage capacity to permit file uploads and storage.
- Integration of payment service providers' "payment gateways" into the online portal to support card or e-wallet payments.
- Early and regular consultation with the business community to improve the portal's user-friendliness.
- Prioritising the physical security and cyber security of tax administration hardware and servers.
- **Creating a robust, secure digital identity credential:**
  - Non-resident suppliers should be able to enter and utilise the online portal securely using their own digital identity credential.
  - The tax administration should in turn require the supplier to validate its ownership of the credential at each attempt to access the portal by using multiple authentication factors.
  - Intermediaries such as tax agents will need to have permission to sign into the system as an approved user through their client's digital identity credential or their own identity credential.
- **Integrating the IT systems for a simplified compliance regime with tax authorities' existing IT systems:**
  - There are considerable advantages to integrating the portal for a simplified compliance regime, wherever possible, with existing IT systems that tax administrations utilise. However, in practice this may prove more challenging due to differences in information requirements and software compatibility.
- **Tax authorities will normally have a number of options to choose from when deciding on the approach for the development of the online portal for the simplified VAT compliance regime for non-resident suppliers.** These broadly include: constructing the online portal utilising in-house IT expertise; outsourcing the project; or selecting a commercial off-the-shelf (COTS) solution. The decision will ultimately depend on an assessment of a range of circumstances, including the functionality of the tax administration's existing IT system, the in-house capability of IT staff, the time available for the implementation of the system, and the funding available.
- **Jurisdictions may consider utilising the open-source software for the implementation of a simplified compliance regime for non-resident suppliers in line with OECD guidance, which the Inter-American Center of Tax Administrations (CIAT) has developed.** At the time of writing, the expectation is that the software will become publicly available during 2021.

**Note on Section 6 Checklists:** Readers will find a comprehensive set of checklists at Section 6 of the Toolkit. The purpose of these checklists is to support the design and implementation of an effective strategy for the collection of VAT on international B2C trade. The checklists do this by distilling and mapping out the main messages from all of the key areas that the Toolkit covers: policy, legislation, administration, operational and IT infrastructure, as well as audit and risk management strategies. This includes coverage of the subjects that Section 4D addresses in depth.

## Guide to Section 4D

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| 4D.4.   | <i>Integrating the new compliance infrastructure with existing infrastructure</i>   | 270  |
| 4D.5.   | <i>Several options are available, including in-house development or outsourcing and the use of “commercial off-the-shelf” (COTS) solutions</i>                              | 271  |
| 4D.6.   | <i>Open-source front-office software to facilitate the consistent implementation of simplified compliance regimes in Latin America and the Caribbean, developed by CIAT</i> | 273  |

This Section of the Toolkit provides further specific guidance to support tax authorities' decision making in respect of the development of the operational and IT infrastructure to support the operation of a simplified VAT compliance regime for non-resident suppliers.

It first considers the possible organisation and governance of the development and implementation process, including the organisation of project management, the required expertise and skill sets and specific considerations in respect of a regime targeted at imports of low-value goods. This is followed by a further detailed analysis of the key elements of the architecture for a simplified VAT registration and collection portal, including the creation and authentication of digital identity and the processes for registration, return filing, payment and updating taxpayer information. This is complemented with guidance on a range of specific aspects, including options for hosting the online portal, location and ownership of hardware and servers, the use of Application Programming Interfaces (APIs), the language(s) of the online portal, secure online filing of forms and uploading of files, and facilitating VAT payment processes for non-resident suppliers.

This section finally considers some of the main challenges of integrating new infrastructure into tax administrations' existing infrastructure and presents a range of considerations to support tax authorities' decision making when choosing between in-house development and/or outsourcing (components of) the development process and/or the use of “commercial off-the shelf” (COTS) solutions. It highlights the development by the Inter-American Center of Tax Administrations (CIAT) and the Norwegian Agency for Development Co-operation (NORAD) of open-source software to support the implementation by tax authorities of a simplified registration and collection regime in line with OECD guidance.

## 4D.1. Governance framework for building the operational and IT infrastructure for a simplified registration and collection regime

### Guide to subsection 4D.1.

| Section | Theme   | Page |
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#### 4D.1.1. Creating the appropriate project management structure

Readers are reminded that a roadmap for the successful implementation of a simplified compliance regime for the collection of VAT from non-resident suppliers is presented in Section 4A. A project-based approach is recommended for the development of the operational and IT infrastructure that is necessary to support the implementation of such a reform, with an appropriate governance structure to ensure proper project management and project delivery.<sup>109</sup> Such a governance structure should identify the staff and/or project team members that will lead on the project and on its various components, their respective roles and responsibilities, and the interactions between them. The main roles and responsibilities in such a project management structure could include the following:

- The “project sponsor” (usually a senior executive in the tax authority), who is responsible for successfully delivering the objectives of an IT infrastructure development project, ensuring appropriate staffing of the governance structure for the project, chairing high-level meetings, and sourcing and distributing funding for the project.
- An “independent assurer”, to provide an assessment of the performance of any external software development firms supporting the project, general progress of the project and issues resolution.
- A “steering committee”, to provide strategic direction to all project staff, ensure that the project scope aligns with the tax authority’s objective, allocate resources and address issues and risks that have implications for the project.

<sup>109</sup> See IMF (2017), *Use of Technology in Tax Administrations 1-3*:

- Use of Technology in Tax Administrations 1: Developing an Information Technology Strategic Plan (ITSP) at <https://www.imf.org/en/Publications/TNM/Issues/2017/03/15/Use-of-Technology-in-Tax-Administrations-1-Developing-an-Information-Technology-Strategic-44714>
- Use of Technology in Tax Administrations 2: Core Information Technology Systems in Tax Administrations at <https://www.imf.org/en/Publications/TNM/Issues/2017/03/15/Use-of-Technology-in-Tax-Administrations-2-Core-Information-Technology-Systems-in-Tax-44689>
- Use of Technology in Tax Administrations 3: Implementing a Commercial-off-the-Shelf (COTS) Tax System at <https://www.imf.org/en/Publications/TNM/Issues/2017/03/15/Use-of-Technology-in-Tax-Administrations-3-Implementing-a-Commercial-Off-The-Shelf-COTS-Tax-44719>

- A “project manager”, to prepare, implement and update the project plan and to manage delivery of outcomes according to the plan.
- A “project team”, to work with the project manager to achieve the requirements of the project plan.
- The operational and IT infrastructure “process owners” in the tax authority, which provide input to the development of the project plan and are responsible for managing business-as-usual processes after the completion of the project.
- Subject matter experts to address particular elements of the project.

The overseeing officer of the project should ideally be a senior official or consultant with a good degree of detailed knowledge of the country’s VAT framework and of the internationally agreed standards and principles for the application of VAT to international digital trade, including the collection of VAT from non-resident suppliers. In addition, the overseeing officer should preferably have prior experience of assisting with the implementation of major IT infrastructure projects for VAT and or for other taxes.

#### ***4D.1.2. What kind of expertise should the project team contain?***

The approach that jurisdictions take towards the development of the operational and IT systems, whether in-house, commercial off-the-shelf (COTS), or outsourcing, will affect the nature and quantity of resources that they will require.

Where they adopt COTS or outsourcing approaches, there will be less need for systems architecture, development and design experts. In-house solutions will require a greater investment in staff with expertise in the specialised areas of software design and IT architecture along with the allocation of time to evaluate and understand the key objectives of the project. This could impact the staffing or commencement of other IT projects until the completion of the project to implement a portal for a simplified compliance regime.

As an estimate for in-house solutions, when there is a pre-existing IT framework (including an existing website to host the online portal for the simplified compliance regime) as well as qualified staff with sufficient capacity and a strong support structure, the process of implementation could require a relatively small core project team, e.g. between 10 and 20 full-time staff.

Such a core team would typically include business analysts, IT systems developers and testers, and user interface support staff. The required skillsets would include project planning, systems architecture building, skills in the design, deployment, testing and monitoring of systems, management of systems security and authentication controls, product support, and incident management. Access to VAT policy specific and legal support should be available where appropriate.

If a tax authority lacks such internal expertise, then it may need to seek advice and/or support from an experienced external website and software developer. Such an external service provider would preferably have experience in building systems to support taxpayers in managing tax and/or VAT compliance obligations. Certain providers of IT and technology advisory services will be willing to act as a contractor that provides its own staff to assist in project management and/or in developing the IT systems for the simplified compliance regime or of specific components.

Staffing resources will further depend on the amenability of the tax authorities’ existing IT systems to “add-ons” or minor modifications and on the availability of COTS to address specific systems needs for the implementation and operation of the simplified registration and collection regime.

The closer a jurisdiction’s policy framework and administrative processes and regulations align to the OECD guidance for the collection of VAT on online supplies by non-resident suppliers, the easier it will be to build on the experience of other jurisdictions around the world in achieving effective implementation of operational and IT systems and to readily obtain assistance from systems and software developers.

#### **4D.1.3. Data protection and ownership of intellectual property rights – Contractual considerations for staff developing operational and IT systems**

Generally speaking, governments require their agencies to have strong safeguards in place to protect data, such as privacy and financial secrecy legislation, secure buildings and IT systems along with strict controls on employees and contractors who have access to data.

Tax authorities should clearly set out the obligations of staff involved with the creation and administration of the online portal for a simplified compliance regime in their contracts, unequivocally requiring them to respect the confidentiality of any sensitive personal and commercial information they encounter in the course of their duties.

Contracts should also provide that the online portal and any supporting technological innovations associated with its operation remain the intellectual property of the national government/tax authority and that staff may not publish the technical specifications and operating software codes that the portal utilises, whether for commercial gain or for non-commercial reasons. Tax authorities should also strongly consider installing a dedicated IT security team whose primary role is to continually test and reinforce the security of the online portal to protect it against organised hacking, cyber-attacks and unauthorised use.

Further analysis, guidance and recommendations on digital security risk management have notably been developed by the OECD in its publication on Digital Security Risk Management for Economic and Social Prosperity (OECD, 2015<sup>[81]</sup>).

#### **4D.1.4. Specific considerations for international B2C supplies of low-value goods**

Governance arrangements will need to take account of the additional requirements for implementing operational and IT infrastructure when the obligations of non-resident suppliers under the simplified compliance regime are extended to the collection and remittance of VAT on imported low-value goods.

As Section 4C of the Toolkit explicitly outlined, jurisdictions can and should utilise substantially the same administrative, operational and IT infrastructure for a simplified compliance regime for remittance of VAT on imported low-value goods as they utilise for supplies of services and intangibles by non-resident suppliers. Tax authorities should thus ensure that senior IT and technology staff that initially design the infrastructure and online portal for the simplified compliance regime consider at the outset all of the principal additional features and functionality that this infrastructure would require to support registration and the remittance of VAT on imported low-value goods by non-resident suppliers.

In particular, jurisdictions will need to implement processes to ensure that customs authorities do not collect import VAT on consignments of low-value goods at importation where non-resident suppliers have already collected VAT at the time of sale. This is likely to require the involvement of customs officials and/or staff with the appropriate customs expertise in the design and development of the operational and IT infrastructure for the simplified compliance regime.

Readers should note that subsection 4B.3 of the Toolkit discusses mechanisms to prevent double taxation and non-taxation in detail, including analysis of operational and IT systems that could underpin such mechanisms. Please see subsections 4B.3.1 through 4B.3.6 in particular.

### **4D.2. Establishing the overall objective of an online simplified VAT registration and collection regime**

The successful construction of the operational and IT infrastructure should start with clearly communicating the objectives of the simplified VAT registration and collection regime to the senior IT and technology staff

that will lead the construction. These senior officers can use these objectives as the basis for establishing a core project management and design architecture framework.

The objectives do not need to be complex but rather should communicate the essential purpose for designing the operational and IT infrastructure. An example could be the following statement:

*“The online portal for a simplified VAT registration and collection regime should allow eligible non-resident businesses to easily register with the tax authority in order to report and settle VAT obligations. It shall provide an alternative to the standard VAT registration, reporting and payment regime, and should align to similar simplified VAT compliance regimes operating in other jurisdictions. This design feature will make the system more familiar and user-friendly for non-resident suppliers and thus further encourage high levels of compliance.”*

### 4D.3. Creating the operational and IT systems and software for a simplified VAT registration and collection regime – The online portal

#### Guide to subsection 4D.3.

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|         | <i>(i) Hosting the online portal</i>  | 266        |
|         | <i>(ii) Ownership, technical prowess and location of the underlying servers and hardware that host the portal and store taxpayer data</i> | 266        |
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|         | <i>(iv) Language of the online portal content</i>   | 267        |
|         | <i>(v) Creating secure electronic forms</i>   | 268        |
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|         | <i>(vii) Facilitating the payment process for non-resident suppliers</i>  | 269        |
|         | <i>(viii) Business consultation on the design of the online portal (“co-design”)</i>  | 269        |

The portal for a simplified VAT registration and collection regime is normally designed to be a microcosm of the system that a tax administration uses to support domestic businesses in complying with their tax obligations, including for VAT registration, reporting and payment.

When designing the portal for a simplified compliance regime, tax authorities must be aware, however, that it will be directed at non-resident suppliers with no prior familiarity with the jurisdiction's VAT regime, and that the design of the portal should seek to accommodate the geographic, linguistic, and cultural barriers, as well as associated costs, that could otherwise act as a deterrent to compliance. Box 4D.1 sets out the core components of a well-designed online portal to facilitate registration and compliance by non-resident suppliers under a simplified compliance regime as outlined in OECD guidance. The possible design of the main functionalities of such an online portal are discussed further below.

#### **Box 4D.1. Typical characteristics of a well-designed online portal to facilitate registration and compliance for non-resident suppliers**

- **Simple and secure access to the registration portal**
  - Log on to the government's online service.
  - Insert basic identification information (e.g. name, address, website URLs, contact persons).
  - Create a verification code or establish a credential to get access to the portal.
- **Simple operating instructions and navigation including**
  - Compatibility with the most commonly used business systems
  - Capacity to upload data rather than having to fill in tables online
  - Availability of structured templates (e.g. XML, Excel) that can be filled in offline
  - Automated controls for submission/lodgement (e.g. validating totals)
  - Ease of making corrections or changes at any time during or after the registration
  - Frequently updated Questions and Answers
  - Supporting the operation of the portal through a back-office support team
  - Sending out of automatic notifications/alerts to taxpayers when there is communication uploaded on the portal
- **Operation at least in English and/or the language(s) of the major trading partners, in addition to the jurisdiction's local language(s)**
  - The language(s) used to be kept simple and clear to avoid any confusion.
- **Secure to use**
  - Different levels of credentials may dictate the level of self-service that can be offered.
  - Better to avoid complexity and potential risks in cases where authorised persons are unable to perform their duties and need to be replaced, e.g. requiring encryption keys or specific individual passwords can result in loss of access to the system if an authorised member of staff departs without informing their successor of how to unlock encryption keys.
  - Secured communication of pass codes because sending pass codes via the post can present risks of accidental loss or deliberate appropriation.
- **Include easily accessible information on compliance obligations**
  - Facilitate access to information on how to comply with VAT obligations under the simplified compliance regime, e.g. through information bubbles on forms; links to relevant guidance; a point of contact for questions and resolving difficulties, etc.

- No need for a VAT registration number (whether under the simplified compliance or standard VAT regime) for accessing information because this may not be available at the point a non-resident supplier has a legitimate need to review such information.

Source: OECD (2017), *The Collection Mechanisms Report*, Annex A (OECD, 2017<sup>[2]</sup>).

#### 4D.3.1. Key functionalities of an effective and secure portal for a simplified compliance regime

Tax administrations' IT systems are, in principle, fundamentally the same in terms of function and purpose, i.e. they need to identify taxpayers, process information so they know who has a liability, and ultimately collect tax (Cotton and Dark, 2017<sup>[82]</sup>). The following table demonstrates the functionality that tax authorities are likely to need in their IT systems. These requirements apply equally to a simplified VAT compliance regime.

Figure 4D.1. Functionality that tax authorities need for IT systems



Source: IMF (2017), *Use of Technology in Tax Administrations 2: Core Information Technology Systems in Tax Administrations* (Cotton and Dark, 2017<sup>[82]</sup>).

Simplification under a simplified VAT compliance regime is focused primarily, if not exclusively, on the front-facing (service) features of the IT-system. The aim is to provide optimal simplicity of access and use for non-resident suppliers to comply with their VAT obligations in the taxing jurisdiction while ensuring the appropriate security safeguards for the tax administration and registrants. The back-end (client record) features of the simplified compliance regime will normally benefit from replicating or integrating the structures of existing IT systems for domestic taxpayers into the simplified regime, as the tax authorities' responsibilities for service standards and systems security must in principle be equally applicable to non-resident suppliers that register under a simplified regime.

The key elements of the IT architecture on which a tax authority will thus need to focus when designing and implementing a simplified registration and collection regime for non-resident suppliers are outlined in the table below.

Table 4D.1. Key elements of the architecture for a simplified VAT registration and collection portal<sup>1</sup>

| Architecture element  | Functionality description   |
|---|---|
| <b>Identification credential</b>  | This functionality will allow entities (non-resident suppliers) wanting to access the system to obtain a credential. These credentials must be stored so that access to the system can be granted once the identification credential is satisfied.  |
| <b>Authenticate using an identification credential</b>                    | This functionality allows a user with a credential to authenticate itself in order to be granted access to the system.  |
| <b>'Act on behalf of' functionality</b>                                   | This functionality allows for intermediaries/agents also to be authenticated users with a credential to access the system to act on behalf of a taxpayer (non-resident supplier) that has authorised them to do so.   |
| <b>Website homepage for the portal for a simplified compliance regime</b> | This functionality allows an authenticated user to sign in to access a set of online services including, but not limited to, registrations, return filing and payments. The home page should also provide access to other information to assist the individual's compliance with VAT obligations. |
| <b>Registration</b>   | This functionality enables an authenticated user to register using the online portal where eligible. The system issues an identification number to the new registrant. It also creates a new account to facilitate the filing of returns, and payments of VAT.                                    |
| <b>Returns</b>  | This functionality allows an authenticated user to report the VAT collected under the simplified compliance regime for a specific period. The filing of the return creates a liability on the supplier's tax account for the reported period.   |
| <b>Payment</b>  | This functionality allows an authenticated user to make an online payment for the VAT liability created by filed returns.   |
| <b>Information Access</b>   | The provision of links to information relating to the compliance obligations being undertaken can assist users to correctly report information.   |
| <b>Data analytics and user feedback</b>                                   | Ensures more comprehensive monitoring of user activity and reporting by users on their experiences.   |

1. International Organization of Standardization, ISO/IEC/IEEE 42010 Systems and software engineering - Architecture description (International Organization of Standardisation, n.d.<sup>[83]</sup>). This is an international standard for architecture descriptions of systems and software.

Source: Australian Taxation Office.

### *(i) Identification and authentication*

The identification credential provides proof of qualification for access to the secure online portal and is usually sourced separately from the system for which a user needs to provide identification. The system for generating identification credentials will provide one to the user after it submits specific identifying information during the application process.

## Box 4D.2. Creating and authenticating a digital identity

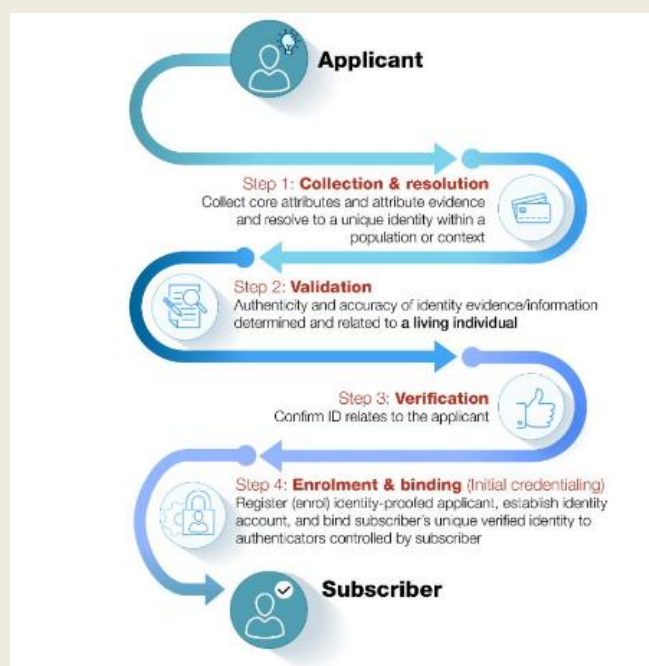
Tax authorities' requirements for digital credentials for identity verification in accessing an online portal for a simplified compliance regime will need to balance the need for very strong protections of non-resident suppliers' identities, commercial data and payment details against the imperative that the regime be simple to access and use.

The Financial Action Task Force (FATF) provides guidance (FATF, 2020<sup>[84]</sup>) on how organisations can permit users of a system to create and authenticate a digital identity. The FATF is an independent inter-governmental body whose mission is to develop policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. Jurisdictions designing an authentication system for a simplified registration and collection regime could utilise this guidance to develop processes and mechanisms for ensuring secure access to the regime's online portal for the reporting and settlement of VAT liabilities.

The main features of FATF's recommendations for creating and authenticating a digital identity are as follows:

- **Collection:** Collect identity attributes and evidence, e.g. by requiring users to fill out an online form, upload photos of documents such as passport or driver's license, etc.
- **Validation:** Ensure documents are authentic and that the data and information the user provides are accurate, e.g. checking (images of) physical security features, expiration dates, and verifying attributes via other services.
- **"Deduplication":** Establish that the identity attributes and evidence relate to a unique person, e.g. via duplicate record searches, biometric recognition and/or de-duplication algorithms.
- **Verification:** Link the individual to the identification evidence that they have provided
- **Enrolment in a user account on the basis of the digital identity and binding of the account to authenticators:** Create an account for the user on the basis of the identity it has created and evidenced; issue and link one or more authenticators with the user's account for approving system access, e.g. passwords, a one-time-code (OTC) generator on a smartphone, etc.

The following diagram summarises this process as FATF recommends:



Source: FATF (2020), *Guidance on Digital Identity* (FATF, 2020<sup>[84]</sup>).

The authentication of an identification credential may be as simple as the provision of a password that the user selects to validate the identification credential. More complex authentication may involve the generation of one-time codes sent by SMS or email, secret questions or codes generated by separate software. The strength of an authentication transaction is characterised by an ordinal measurement known as the Authentication Assurance Level (AAL) (National Institute of Standards and Technology, 2021<sup>[85]</sup>). Stronger authentication levels, such as those provided by the use of digital certificates, effectively reduce the risk of cyber-attacks but may not be necessary depending on the severity of the consequences of the credential being compromised.

### Box 4D.3. The three main available authentication factors

There are three types of factors that organisations can utilise to authenticate someone: (1) ownership factors, (2) knowledge factors, (3) inherent factors.

Authentication can rely on various types of authentication factors and protocols or processes. These authentication factors can provide different levels of security.

A single authentication factor is generally not considered sufficiently trustworthy. An authentication process is usually more robust and reliable when it employs multiple types of authentication. The following diagram illustrates different types of authentication factors:



Source: World Bank Group.

Non-resident suppliers often engage with intermediaries and agents to undertake compliance responsibilities for them. For that purpose, it is advisable to have a facility that enables a non-resident business that has obtained an identification credential to share the credential and the authentication so that its authorised intermediary can access the online portal. Alternatively, the intermediary should be able to register in its own name and obtain authorisation to link submissions to the accounts of the taxpayers it supports.

### (ii) Access to the portal of the simplified compliance system and its main functionalities

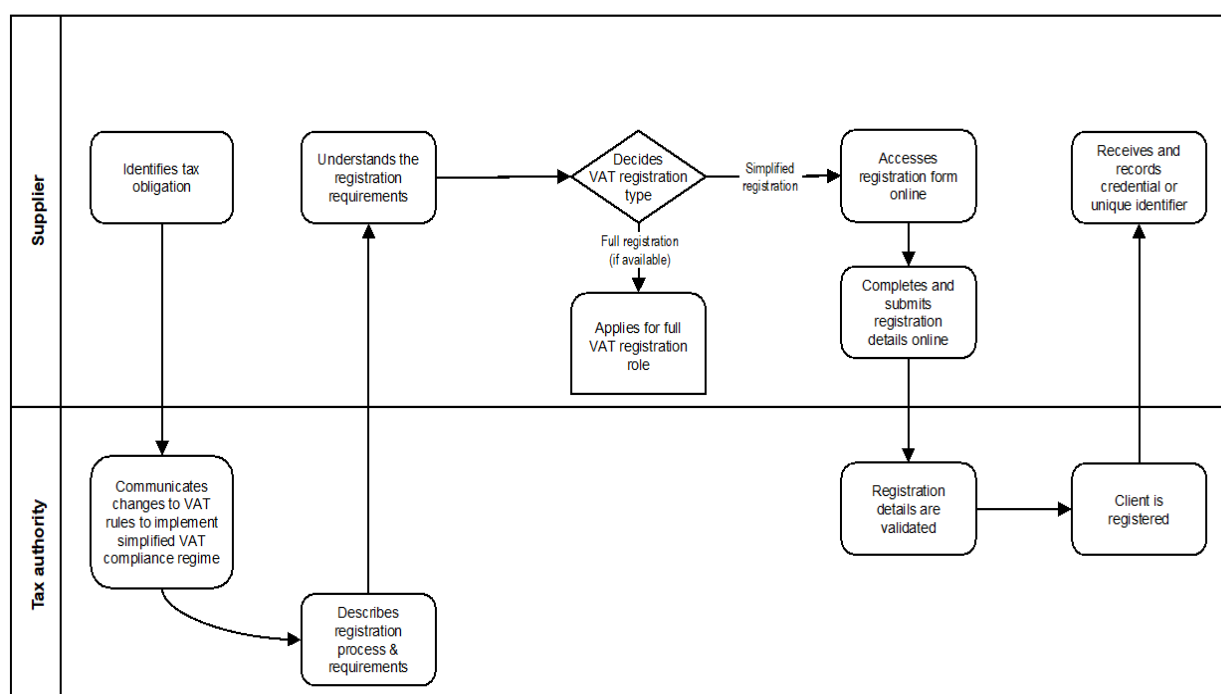
The successful input of an authenticated identification credential will give the authenticated user access to the home page of the portal for the simplified compliance regime. The authenticated user will then have access to a set of online services including, but not limited to, registration, VAT returns filing and payment. The home page should also provide access to other information to assist in compliance with VAT obligations such as help text functions and links to detailed guidance on the jurisdiction's website covering obligations for non-resident suppliers.

There are a minimum of four distinct user interfaces that a non-resident supplier will use to engage with a tax authority within the portal for a simplified VAT compliance regime, which are described in further detail below.

- **Registration:** The system will issue an identification number (a unique identifier; UID) to the new registrant, i.e. the non-resident supplier, and it will create a new account for the new registrant to enable the filing of returns and payments of VAT. Tax authorities are advised to adopt unique identification numbers for registrants under the simplified compliance regime in a format that is distinguishable from normal VAT registration numbers in recognition of the fact that the registrant is a non-resident and has normally passed a lower level of identity verification checks to obtain registration.

Alternatively, where it is preferred that the format of the simplified registration regime be consistent with domestic registration syntax, it is recommended that underlying indicators be put in place so that the type of taxpayer is evident in a system query and so that simplified system registration population can be easily segregated for reporting purposes.

Figure 4D.2. Example of a simplified VAT registration process for non-resident suppliers

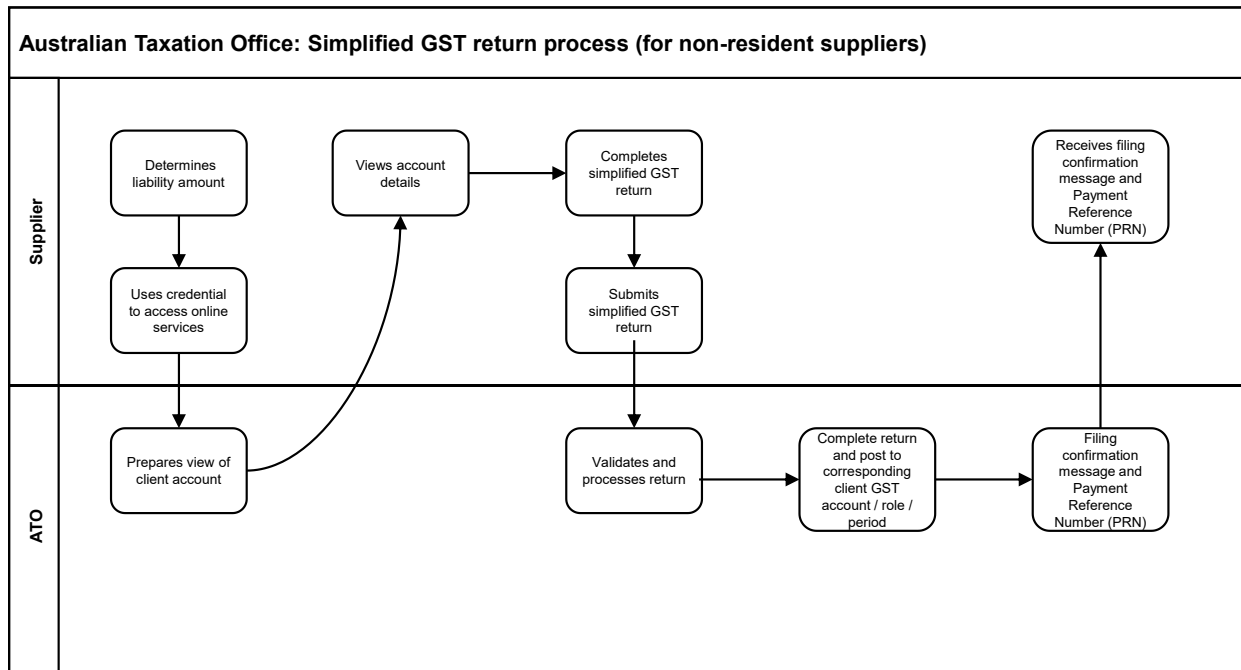


Note: The sourcing of the identity credential is from a separate stand-alone system available on the Australian Taxation Office's business registration webpage.

Source: Australian Taxation Office.

- **Return filing:** This functionality allows the authenticated user to report the VAT collected under the simplified compliance regime for a specific period. As recommended previously, the reporting fields required for return filing under a simplified compliance regime can remain limited, focusing primarily on the total value of supplies made to customers in the jurisdiction for the reporting period (per applicable VAT-rate where needed) and the calculated VAT on these supplies. The filing of the return will create a liability in the non-resident supplier's tax account for the reporting period.

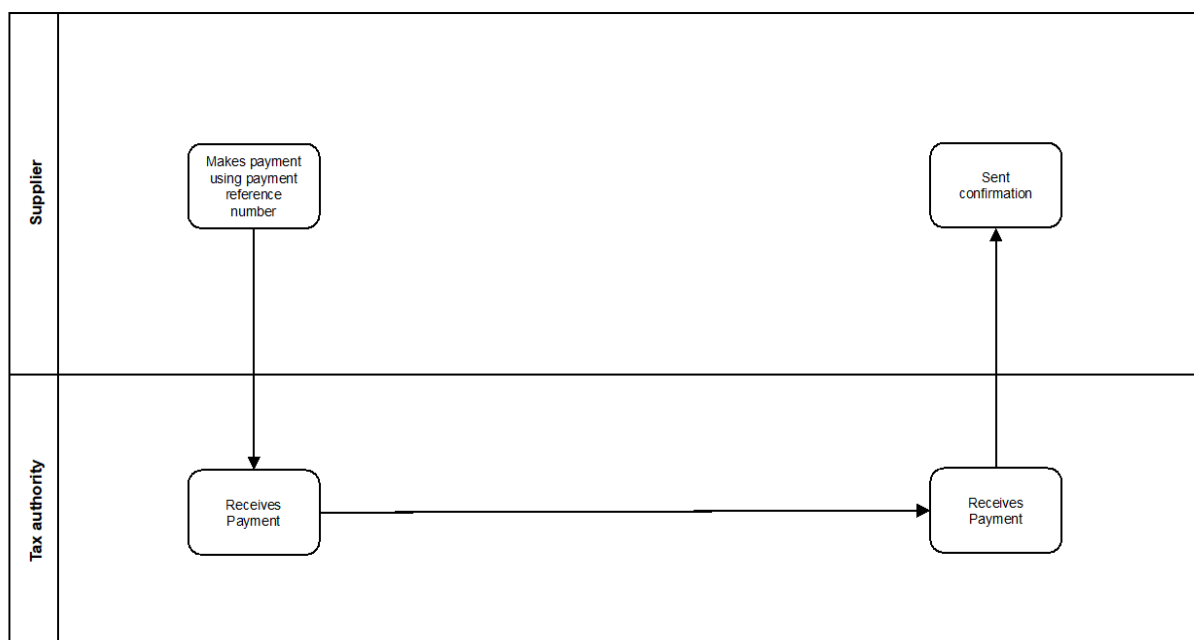
Figure 4D.3. Example of a simplified VAT return process for non-resident suppliers



Source: Australian Taxation Office.

- **Payment:** This functionality allows an authenticated user to make an online payment for the VAT liability created by filed returns. Where a selection of payment options is available then the user interface should permit the non-resident supplier to select the payment option it wishes to utilise. The system may redirect the user temporarily to a payment processor's website or simply provide the user with a number to include as a reference in the payment information when making the payment. The system should update the client's account records to recognise receipt of the payment and also provide a confirmation message. For further details, see also subsection 4D.3.2.(vii).

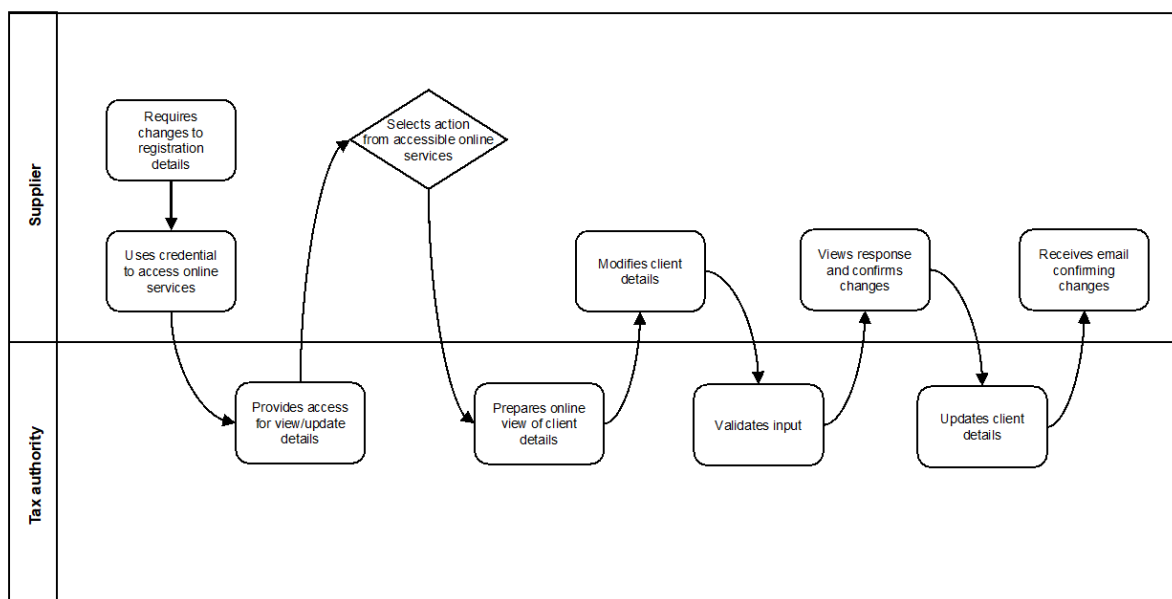
Figure 4D.4. Example of a simplified VAT payment process for non-resident suppliers (after receipt of payment reference number)



Source: Australian Taxation Office.

- Updating taxpayer information:** As non-resident suppliers continue to operate, they will at times experience changes in personnel responsible for using the simplified compliance regime portal. For this reason, it is important that the system provides functionality to enable users to be deleted, details updated or new users added.

Figure 4D.5. Example of a simplified VAT update process for non-resident suppliers



Source: Australian Taxation Office.

### **4D.3.2. Additional systems and software requirements**

#### ***(i) Hosting the online portal***

It is highly recommended that the login page to the simplified registration and collection portal be hosted on the tax authority's existing website rather than creating a standalone Internet address. The reason for this is that the inclusion within existing webpages will provide a high level of certainty to users that the portal is legitimate and not a fraudulent site designed to steal funds from businesses.

Hosting the portal on the tax jurisdiction's existing webpages also ensures that the security and integrity processes already in place for the pages in the tax authority's website are extended to the simplified compliance regime.

An online portal will normally be underpinned by a number of fundamental technology standards. Two key standards are:

- **HTTP (v1.1 or v2.0):** The Hypertext Transfer Protocol (HTTP) is a stateless application-level protocol for distributed, collaborative, hypertext information systems. HTTP is the underlying protocol used by the World Wide Web and this protocol defines how messages are formatted and transmitted, and what actions web servers and browsers should take in response to various commands. It was first standardised in 1999.
- **TLS (v1.2):** The Transport Layer Security protocol provides communications security over the Internet. The protocol allows client-server applications to communicate in a way that is designed to prevent eavesdropping, tampering, or message forgery.

The exchange of data that are encrypted with TLS achieves a high level of security (HTTP Secure; HTTPS). Well-configured TLS ensures that no third party can eavesdrop or tamper with any communications and is internationally recognised as the preferred standard. Tax authorities are most likely to have already adopted the TLS standard, especially if they allow electronic filing through web forms.

#### ***(ii) Ownership, technical prowess and location of the underlying servers and hardware that host the portal and store taxpayer data***

Since IT equipment is capable of processing, storing or communicating sensitive or classified information, it is important that an IT equipment management policy be developed and implemented to ensure that IT equipment, and the information it processes, stores or communicates, is protected in an appropriate manner. Section 5 of the Toolkit provides further discussion of this subject.

Regardless of whether IT equipment is purchased and owned by the tax authority, or leased from a third party, the security of the servers and hardware should be at the forefront of project planning for the implementation of the IT changes.

IT equipment should be classified for security purposes based on the highest sensitivity or classification of information that it is approved for processing, storing or communicating for tax purposes

Leading IT services providers may already have a contractual relationship with the tax authority and/or other government agencies, which governs aspects such as server location, storage protocols and security.

When jurisdictions choose to outsource or purchase commercial off-the-shelf (COTS) solutions, this could include the provision of IT servers or even cloud-hosted services as part of the arrangement. Again, the tax authority will need to assure the security of information that may be accessed via third-party service providers and contractual arrangements should reflect such obligations.

### ***(iii) The use of Application Programming Interfaces (APIs) for network communications with non-resident suppliers' IT systems***

Jurisdictions are increasingly moving towards greater connectivity between tax authorities' compliance systems and businesses' point-of-sale and accounting systems for VAT reporting and compliance. This includes the use of Application Programming Interfaces (APIs), which enable the direct and automatic transfer of data from a supplier's accounting and record-keeping software to the reporting system. APIs minimise the need to enter information manually.

APIs are useful whenever system-to-system integration is possible, for example, for the provision of transactional data. They allow the automation of data provision and thus the reduction of compliance costs. They also provide an opportunity for the tax authority to make information that is relevant for determining a supplier's VAT-liability directly available to the supplier's compliance system (e.g. the currency exchange rate to be used by the non-resident supplier for VAT filing and payment; VAT rate information particularly in jurisdictions with multiple VAT rates; access to information to determine whether a customer is a business or a private consumer for VAT-purposes).

APIs are widely used in many environments and their use will increase in the coming years. The use of APIs by tax authorities to facilitate compliance under a simplified compliance regime for non-resident suppliers enhances the opportunity for providers of VAT compliance solutions and software to manage VAT compliance on behalf of non-resident suppliers across multiple jurisdictions. The use of APIs to support VAT compliance will also further enable the integration of functionality to support more automated international VAT compliance utilising suppliers' Enterprise Resource Planning (ERP)<sup>110</sup> systems.

The greater the consistency among simplified compliance regimes and APIs implemented by tax authorities across jurisdictions, the greater the opportunity for non-resident suppliers to integrate VAT-reporting obligations into their accounting and tax compliance systems to maximise the efficiency and quality of multi-jurisdictional VAT compliance. This is one of the key motivations for online businesses and online marketplaces, which typically face VAT obligations in multiple jurisdictions, and for systems developers to strongly encourage the consistent implementation of simplified VAT compliance regimes for non-resident suppliers based on OECD guidance.

### ***(iv) Language of the online portal content***

The online portal to a jurisdictions' simplified compliance regime is essentially directed at non-resident suppliers. It is therefore recommended that the operation of the portal be made available in English and, ideally, in the language(s) of the jurisdiction's main trading partners. This will facilitate and enhance compliance considerably, as suppliers' staff tasked with accounting and tax compliance may not always be familiar with the language in each of the jurisdictions in which they have VAT obligations. Making the necessary operating instructions and information available at least in English will also facilitate the introduction of the necessary changes to accounting and tax compliance systems, as English is often the default language used by systems developers.

Multilingual websites are becoming more and more common. Website translation is the process of taking website content in its original language and adapting it, often word-for-word, into other languages to make it accessible and useable to global users. This is best achieved by the creation of versions of the website rather than by creating duplicate sites, so that any changes to the original site will appear across all language versions. Automatic translation of information for taxpayers may create challenges. Jurisdictions

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<sup>110</sup> Enterprise resource planning (ERP) refers to a type of software that organisations use to manage day-to-day business activities such as accounting, procurement, project management, risk management and compliance, and supply chain operations.

must legally protect their procedures against the consequences of incorrect translation and potential misinformation to taxpayers when using automated translation.

Translating a website is fundamentally a technology issue, requiring automation and software to manage numerous workflows and processes. A number of different technologies<sup>111</sup> can be used to handle these workflows, in particular:

- A proxy-based solution: Technologies are used to leverage content and structured code of the main website. This makes it easy to translate, deploy and operate multilingual versions.
- Content management system (CMS) connectors: CMS connectors allow website owners that prefer to store, and control translated content internally to manage the process without the aid of external service providers (rather than with a translation vendor).
- Application programming interfaces (APIs): Translation APIs are sourced from translation providers and have broader scope than a CMS connector, providing flexibility to create workflows for any type of content requiring translation, not just content stored in a CMS.

#### **(v) Creating secure electronic forms**

Online forms, which businesses can complete to securely record and transmit their VAT obligations for filing and reporting purposes, can be used to streamline and improve the compliance process. A well-designed form replaces time consuming and complicated paper processes.

The creation of a secure electronic form through which information can be submitted electronically for registration, reporting, payment or updating information to a tax authority is a critical design element of a simplified registration and compliance portal.

256-Bit SSL (Secure Sockets Layer) is the standard security protocol for providing secure communications on the Internet, through the authentication and encryption of traffic between the browser and Internet servers. A website is normally secured with SSL if “https” is included in the web address. A properly configured public HTTPS website includes an “SSL/TLS” certificate that is signed by a publicly trusted certification authority (CA). Users visiting an HTTPS website can be assured of:

- Authenticity. The server presenting the certificate is in possession of the private key that matches the public key in the certificate.
- Integrity. Documents signed by the certificate (e.g. web pages) have not been altered in transit.
- Encryption. Communications between the client and server are encrypted.

These properties allow users to securely transmit confidential information such as credit card numbers, tax identification numbers, and login credentials over the Internet, and to be sure that the website to which they are sending the information is authentic. With an insecure HTTP website, these data are sent as plain text, readily available to any eavesdropper with access to the data stream. Users of such an unprotected website will have no trusted third-party assurance that the website they are visiting is what it claims to be.

#### **(vi) Facilitating file uploads**

As discussed in subsection 4C.1.1, a file upload facility could be incorporated into the design of the simplified system to enable clients to electronically upload documents to the tax authority where required. Whether this is incorporated into the simplified regime or not, it is recommended that where tax authorities require registrants to submit additional information electronically, a facility for secure transmission of transactional data be provided.

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<sup>111</sup> See, for example, *The Technologies of Translation* by Motionpoint.com at <https://en.motionpoint.com/resources/translation/the-technologies-of-translation/>.

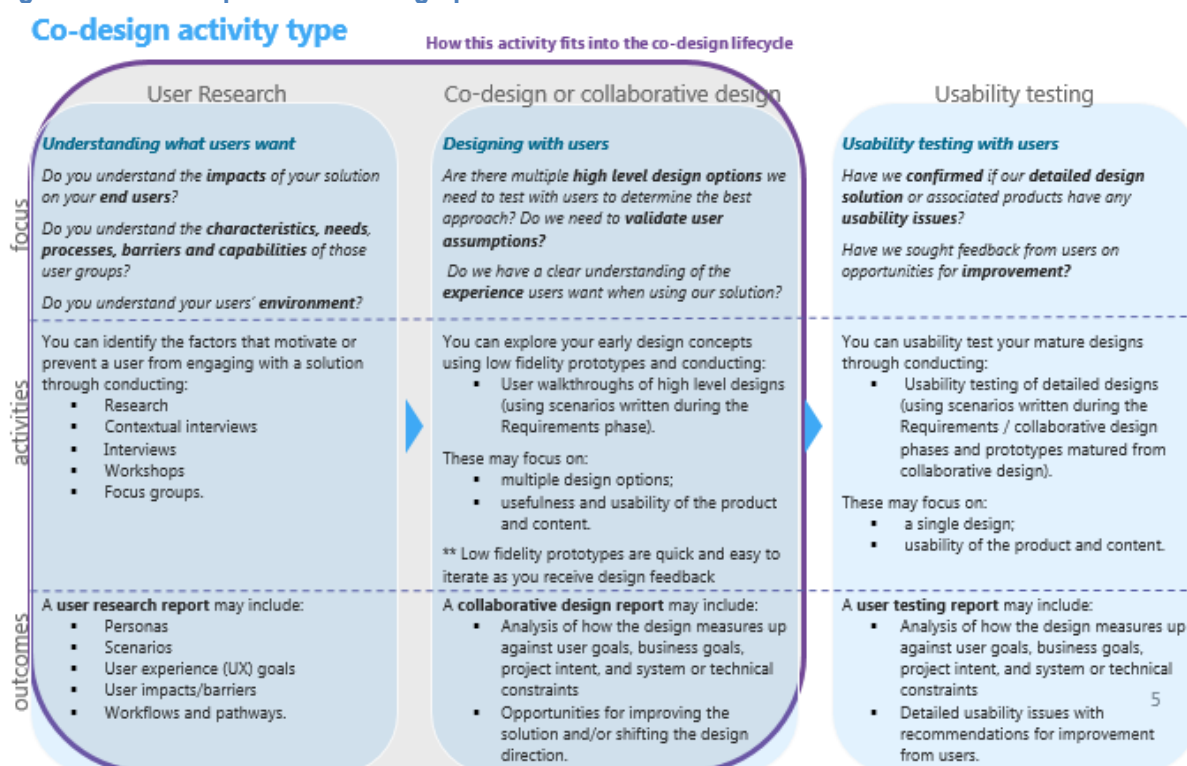
(vii) **Facilitating the payment process for non-resident suppliers**

Tax authorities are encouraged to consider the nature, identity, status and domicile of payment service providers that could interface with or be embedded within the online portal for a simplified compliance regime in order to facilitate payments for settlement of VAT due. As noted in subsection 4C.1.8, some jurisdictions have embedded the payment process into the tax authority's website to facilitate payments (e.g. New Zealand).<sup>112</sup> Other jurisdictions provide a form through which non-resident suppliers can communicate credit card details where this is being used as the payment mechanism, or an option to advise that the payment will be made through bank transfer (with reference to the applicable SWIFT code, i.e. the international bank code that identifies financial institutions involved in international payments; also known as a Bank Identifier Code or BIC; e.g. Australia). When a VAT return is filed, a payment reference number is generated to be reflected in the separate payment process that the supplier then makes via means of a bank/electronic funds transfer.

(viii) **Business consultation on the design of the online portal (“co-design”)**

Experience from tax authorities that have successfully implemented a simplified registration and collection regime suggests that consultation with representatives from the relevant businesses and/or business sectors has contributed considerably to the design quality and performance of the online portal. The following diagram represents an example of such a “co-design process” aimed at identifying user requirements and incorporating them into the design architecture where possible.

Figure 4D.6. Example of a co-design process



Source: Australian Taxation Office.

<sup>112</sup> See *Pay using a debit or credit card* in New Zealand Inland Revenue Service website at <https://www.ird.govt.nz/managing-my-tax/make-a-payment/ways-of-paying/paying-electronically/debit-or-credit-card>.

#### 4D.4. Integrating the new compliance infrastructure with existing infrastructure

A key aspect of the implementation of a simplified VAT compliance regime for non-resident suppliers is the integration of the new regime into the existing tax IT infrastructure. Tax authorities are likely to be faced with a number of challenges in integrating the online portal for the simplified compliance regime, which involves primarily the “front-end” (taxpayer-facing end) of a tax authority’s IT-system, with the “back-end” functions of the existing IT system. Particular aspects to consider include the following:

- Client account systems. A simplified compliance regime for non-resident suppliers will typically require less information to be provided by registrants than the information that is required from businesses that register under the standard VAT regime. This can create issues for the operation of existing client account systems, for instance where the system does not permit the creation of a client account when information is missing that is not required under the simplified compliance regime (e.g. the non-resident supplier’s bank details). The client account system should be adjusted to allow either that the information is not required (or, as a last resort, that a dummy number be utilised to satisfy the system demand).
- Compliance case management systems, which allow the steps and details of an audit to be properly documented, are another example of back-end systems that may need to be adjusted in light of the implementation of a simplified compliance regime. Actions facilitated by the case management system can, for instance, include the issuance of a tax assessment and the application of administrative penalties. If this functionality cannot be extended to audits of registrants in the simplified system, then manual processes may be required to create such a tax assessment or administrative penalty.
- Law referencing systems are sometimes part of a tax authority’s IT infrastructure, so that correct and up-to-date reference can be made to legal provisions and administrative guidance in communicating with taxpayers. This could, for instance, include system-generated reminders for late filing of returns or for non-payment. Where a simplified compliance regime does not connect with this system, it may require manual intervention to ensure the correct referencing to the relevant legal and administrative provisions.
- Other systems that support client engagement such as website pages, call centre scripting, correspondence and complaints may also require integration or stand-alone processes.

CIAT has provided useful recommendations on integrating new IT infrastructure with tax administrations’ legacy IT-systems (Inter-American Center of Tax Administrations (CIAT), 2020<sup>[76]</sup>). This includes a number of key actions, including:

- Identifying the points of integration: systems components, services, pages, screens, tables, database objects, lines, etc.
- Designing the integration strategy for each point of integration, with the objective of creating access to the existing function or information using standard protocols supported by the great majority of market tools. New technologies such as screen scraping software and Robotic Process Automation (RPA) could be very valuable options at this stage.
- Executing the designed changes. Some components may need to be totally or partially reconstructed, which will require the support of a specific accompanying strategy for their migration to the existing system.

#### 4D.5. Several options are available, including in-house development or outsourcing and the use of “commercial off-the-shelf” (COTS) solutions

Tax authorities will normally have a number of options to choose from when deciding on the approach for the development of the online portal for the simplified VAT compliance regime for non-resident suppliers. These broadly include: constructing the online portal utilising in-house IT expertise; outsourcing the project; or selecting a commercial off-the-shelf (COTS) solution. The decision will ultimately depend on an assessment of a range of circumstances, including the functionality of the tax administration’s existing IT system, the in-house capability of IT staff, the time available for the implementation of the system, and the funding available.

Although the capabilities of modern, custom-built IT solutions and commercial off-the-shelf (COTS) IT solutions for tax authorities may ultimately be similar, the approaches for their implementation can differ (Jimenez, Mac an tSionnaigh and Kamenov, 2013<sup>[86]</sup>). Custom solutions built in-house or delivered via outsourcing can accommodate specific existing business processes. These solutions may have lower initial costs, as they can leverage off internal experience and existing systems and can allow more control over the final product. On the other hand, these solutions are dependent on internal expertise, which may not be readily available, and they may not fully keep pace with technological innovations.

In-house development may be most suitable in circumstances where the existing IT infrastructure supports the desired features of a simplified online portal, in particular:

- Providing a webpage in the existing IT infrastructure that could operate as the online portal for the simplified registration and collection process; and
- Utilising an identity credential verification process that provides non-resident suppliers, who are unable to claim VAT refunds under the simplified compliance regime, secure access to the portal without imposing the typically strict identification protocols that are necessary to reduce the risks of refund fraud under a standard VAT registration regime.

In comparison, COTS solutions are ready-made, third-party products designed to accommodate best practice in business processes. They can provide advanced technology solutions with potentially shorter implementation timelines, are more likely to have been rigorously tested, and, over time, can incur lower costs to tax authorities than implementation of their own proprietary software. However, COTS solutions allow fewer controls over customisation, maintenance and intellectual property rights.

The Inter-American Center of Tax Administrations (CIAT) has identified challenges with the use of COTS encountered by tax authorities in developing economies that faced the need to make radical changes to processes that had not been considered when acquiring the product (Inter-American Center of Tax Administrations (CIAT), 2020<sup>[76]</sup>). The cost of licenses, maintenance and support, which are generally paid annually, may also create pressures, including those attributable to cost increases due to upgrades and extensions that had not been anticipated and that may be required to keep the system operational. If a tax authority procures solutions from private providers, it will in any case need to contractually define a service level agreement (SLA) for the provided solutions. The contractual relationship will need to clearly specify responsibilities, confidentiality requirements, and liability for non-compliance with the SLA.

Different approaches have been taken globally by jurisdictions that have implemented a simplified compliance regime. These include, for example:

- Australia constructed its simplified VAT compliance system in-house utilising existing IT infrastructure. Adapting this infrastructure for the simplified reporting portal and complementing it with a standalone identity credential process with significantly reduced identity authentication requirements have been key to reducing costs and minimising system build time.

- New Zealand used existing customer registration, return filing and self-service portal functions utilising standard configuration in a COTS package. It ensures that front-end (taxpayer-facing) and back-end systems can operate on the basis of tax identification numbers that are consistent for both domestic and non-resident businesses. The non-resident registrants can be isolated for specific tax management practices through the use of underlying attributes.
- Spain generally uses in-house IT infrastructure for the registration process and reporting system under its simplified compliance regime (which has been designed to operate within the broader EU “one-stop-shop” framework) using the capacities of a well-equipped IT department. However, for more specific taxpayer services, IT and artificial intelligence developments have been partially outsourced to private technology service providers.
- Chile developed and implemented in-house a dedicated web portal for registration and compliance utilising existing IT infrastructure. Its identity credential process builds on existing systems but is handled separately for non-resident suppliers. Tax identification numbers are consistent for both domestic and non-resident businesses, which allows for the use of existing back-end and audit systems. For VAT settlement, the returns filing portal has been integrated with the payment gateways of the National Treasury.

The following table provides a summary overview of possible advantages and disadvantages for tax authorities to consider in evaluating the possible approaches to the development of the IT infrastructure to support the operation of a simplified VAT compliance regime for non-resident suppliers.

**Table 4D.2. Approaches to building the IT infrastructure for simplified compliance regimes**

| System Type                                     | Advantages   | Disadvantages   |
|---|--|---|
| <b>Commercial Off-the-Shelf (COTS) Solution</b> | <ul style="list-style-type: none"> <li>- May allow for faster delivery and/or ready-to-use solutions</li> <li>- Likely to provide latest technology and/or proven software that is pre-tested and supported</li> <li>- Opportunity for tax authority staff to work alongside external service providers in implementation and thus increase capability</li> <li>- May result in lower cost over time (but need to carefully manage costs of maintenance and upgrades)</li> </ul> | <ul style="list-style-type: none"> <li>- Minimal customisation</li> <li>- No intellectual property rights</li> <li>- Higher initial costs</li> <li>- May create a reliance on external IT provider for system maintenance or require upskilling of existing IT staff to support changes in the COTS system</li> <li>- Requires continued assessment of available upgrades and the additional cost of those upgrades if not part of the initial contract.</li> </ul> |
| <b>Bespoke COTS Solution</b>                    | <p>Same as above COTS IT solution, plus:</p> <ul style="list-style-type: none"> <li>- Tailored solution to organisational needs</li> </ul>   | <p>Same as above COTS IT solution, plus:</p> <ul style="list-style-type: none"> <li>- Client experience impacted when a bespoke COTS solution is too inconsistent with other tax authority systems</li> <li>- Complex integration to core back-end systems can be expensive to maintain and difficult to change.</li> <li>- Custom design systems may be more complex and incur higher costs to upgrade</li> </ul>  |

| System Type                              | Advantages  | Disadvantages   |
|--|---|---|
| <b>In-house IT Solution</b>              | <ul style="list-style-type: none"> <li>- Allows tax administrations more control over the solution</li> <li>- Lower initial and maintenance costs</li> <li>- Can leverage off internal experience and systems</li> <li>- System changes can be easier and be made more quickly depending on capability of IT staff and complexity of the regime</li> <li>- Intellectual property rights/source code are with the tax authority</li> </ul> | <ul style="list-style-type: none"> <li>- Lower initial functionality and slower deployment unless mature IT infrastructures and systems are in place</li> <li>- Dependent on internal expertise which may be difficult to acquire or retain</li> <li>- May not keep pace with technological innovations.</li> <li>- Tax administration incurs all costs and risks of the project</li> </ul> |
| <b>Outsourced IT Solution (Not COTS)</b> | <p>Same as above in-house IT solution, plus:</p> <ul style="list-style-type: none"> <li>- Higher initial costs</li> <li>- Opportunity for tax authority staff to work alongside external service providers and consultants in implementation and increase capability</li> </ul>   | <p>Same as above in-house IT solution, plus:</p> <ul style="list-style-type: none"> <li>- Increased focus on contract management</li> <li>- High dependence on the service provider which can make the tax administration captive</li> </ul>  |

Source: OECD analysis.

#### 4D.6. Open-source front-office software to facilitate the consistent implementation of simplified compliance regimes in Latin America and the Caribbean, developed by CIAT

The Inter-American Center of Tax Administrations<sup>113</sup> (CIAT) and the Norwegian Agency for Development Co-operation (NORAD) have entered into a co-operation agreement<sup>114</sup> to deliver open-source software, named “Digital Economy Compliance”, aimed at facilitating registration and compliance obligations for VAT and consumption taxes on transactions carried out by non-resident suppliers. Depending on the set-up, this software is intended to assist tax authorities in implementing a simplified registration and collection regime for non-resident suppliers in line with OECD guidance.

According to CIAT specifications, the software is multilingual and can be installed in a local data centre or in the cloud, for use in a single or multiple jurisdictions, and it supports the following processes:

- Simplified registration
- VAT return filing and settlement
- VAT liability calculation
- Adaptability to different business models of the digital economy
- Statistical reports, amongst others

It is envisaged that, after a testing period, the software will be publicly available in the course of 2021.<sup>115</sup>

<sup>113</sup> The Inter-American Center of Tax Administrations (CIAT) is a non-profit international public organisation that provides specialised technical assistance for the modernization and strengthening of tax administrations. Founded in 1967, CIAT currently has 42 member countries and associate member countries from four continents: 32 countries of the Americas, five European countries, four African countries and one Asian country.

<sup>114</sup> See CIAT, IDB, World Bank, OECD, CIAT and NORAD coordinate efforts to develop tools for managing VAT in the digital economy at <https://www.ciat.org/bid-banco-mundial-oecd-ciat-y-norad-coordinan-esfuerzos-para-el-desarrollo-de-herramientas-para-gestionar-el-iva-en-la-economia-digital/>.

<sup>115</sup> See <https://www.ciat.org/ciatblog-la-economia-digital-la-cooperacion-noruega-y-el-ciat-una-herramienta-clave/>.

# 5 Audit and risk management

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Section 5 of the VAT Digital Toolkit for Latin America and the Caribbean provides guidance on effective audit and administrative risk management strategies and processes, including concrete measures to address non-compliance under a simplified registration and collection regime.

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## Guidance for readers

- Section 1 briefly summarised the OECD guidance for the collection of VAT on international trade that provides the basis for the recommended policy framework.
- Section 2 provides the overall context of the economic background to the Toolkit, particularly the explosive growth of international digital trade in recent years that has created challenges for VAT policy and administration.
- Section 3 comprehensively summarises and analyses the policy framework that the OECD recommends for the collection of VAT on international digital trade. Section 3 lays the foundation for policy makers and tax administrators to fully benefit from the guidance in Sections 4 and 5 of the Toolkit. It is divided in three parts: 3A. International Supplies of Services and Intangibles (in particular of “digital services” and “digital products”); 3B International Supplies of Low-Value Goods (especially online sales of goods); 3C. The Sharing and Gig Economy.
- Section 4: Implementing a simplified registration and collection regime is the OECD’s recommended approach to the collection VAT from non-resident suppliers making international B2C supplies of services and intangibles. Section 4 of the Toolkit provides jurisdictions with practical advice on the development of an administrative and operational infrastructure to implement this framework successfully, both for international supplies of services and intangibles as well as for international supplies of goods.
- Section 5 advises policymakers and administrators on the development of audit and risk management strategies under a simplified registration and collection regime.

## Key messages

Sections 3 and 4 of this Toolkit provide guidance for the implementation of a simplified VAT compliance regime for non-resident suppliers of services and intangibles and for imports of low-value goods. Section 5 of the Toolkit now provides in-depth analysis of the main components of a comprehensive audit and risk management strategy to support the effective collection of VAT under such a simplified compliance regime along with recommendations for its implementation.

A well-designed, simple and easy-to-use registration and compliance regime for those non-resident suppliers, based on internationally agreed principles and consistently implemented across jurisdictions, will achieve high levels of compliance and VAT revenue collected. An approach to policy design and administration that facilitates and stimulates compliance allows tax administrations to focus risk mitigation and enforcement actions on the remaining fraction of non-compliant businesses.

**In order to maximise compliance levels and reduce risks of non-compliance, jurisdictions should especially consider the following aspects:**

- **Facilitating compliance:** Appropriate simplification and alignment with OECD guidance is particularly important to facilitate compliance for businesses faced with obligations in multiple jurisdictions. In principle, obligations should be limited to what is strictly necessary for the effective collection of the VAT, supported by online processes.
- **Clear rules and consistency in the law:** Legislation and administrative guidance should provide clear information on the obligations that non-resident suppliers have under the simplified compliance regime. Legal uncertainty should be minimised.
- **Clear instructions and communication:** Jurisdictions should provide clear guidance to non-resident suppliers on the main aspects of the simplified compliance regime for non-resident suppliers. This includes the scope of the regime (including types of supplies in scope); the rules for determining the customers' status where this is relevant for the operation of the regime; indicia and criteria for determining and evidencing the customers' location; applicable VAT rate(s) and exemptions, among other aspects. It is strongly recommended that this guidance be made available in English and in the language(s) of the jurisdiction's main trading partners in addition to the jurisdiction's local language(s) and be proactively communicated by the tax authorities.
- **Co-operative compliance:** The implementation of co-operative compliance approaches between tax administrations and businesses may further help to enhance compliance.

**Risks associated with a simplified registration and collection regime can be identified and prioritised along the different stages of implementation of the regime as follows:**

- **Preparatory phase** (prior to the date of entry into force of the reform onwards): focus on the VAT registration process. The objective is to minimise the number of in-scope non-resident suppliers failing to register.
- **Implementation phase** (from the date of entry into force of the reform onwards): focus on the VAT return and remittance processes. The objective is to minimise the number of in-scope non-resident suppliers failing to timely report and/or remit the tax; and
- **Maturity phase** (post implementation once the law has settled in and onwards): focus on inaccurate reporting, customer misrepresentation, among other risks. The overall objective is to correct complex issues and further limit cases of non-compliance.

**Best practices to ensure identification of non-compliant businesses and to support targeted enforcement action involve:**

- **Use of third-party data:** Third-party transactional data can be particularly helpful in identifying the in-scope non-resident suppliers and detecting non-registration, to monitor compliance and to support a risk-based compliance management strategy. This would typically include data from banks and financial intermediaries, from stakeholders in the goods trade (including postal operators and express couriers), and from the use of “e-discovery solutions” and “Internet scraping” tools (web harvesting and web data extraction).
- **Development of tools to combine data and analytics:** A number of tax administrations have adopted a data analytics strategy in order to obtain and process data not available through reporting or record-keeping obligations or third-party sources.

To further **enforce compliance** by non-resident suppliers under the recommended simplified VAT registration and collection regime, jurisdictions should especially consider:

- **Penalties and other enforcement measures:** To discourage non-compliance by non-resident suppliers, appropriate enforcement measures should be in place such as interest payments and administrative penalties, criminal prosecution (international co-operation based on bi- or multilateral agreements may be crucial), public acknowledgments of registered businesses among others.
- **Withholding by financial intermediaries as potential fallback solution:** Jurisdictions may consider implementing a withholding obligation for financial intermediaries specifically on payments to non-compliant non-resident suppliers, as a backstop solution and disincentive to non-compliance.
- **International administrative co-operation:** Jurisdictions should enhance their capacity to enforce VAT compliance by non-resident suppliers by making effective use of the available instruments for international administrative co-operation. In particular, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters is the most comprehensive multilateral instrument available for all forms of administrative co-operation between jurisdictions in the assessment and collection of taxes, including VAT. This co-operation encompasses exchange of information, including automatic information exchanges, and assistance in the recovery of foreign tax claims (subject to any reservations).

**Internal aspects of tax administrations also play an important role in an effective risk management strategy.** Jurisdictions should establish an effective governance framework to ensure that the necessary legal and organisational framework, the personal resources and infrastructure is in place to support the deployment of an effective risk management and audit strategy. Risk management should also involve the analysis of the risks that arise within tax administrations. Internal risks, especially information security risks, may affect the effectiveness of the implemented measures and influence compliance.

**Note:** Readers will find a comprehensive set of checklists at Section 6 of the Toolkit. The purpose of these checklists is to support the design and implementation of an effective strategy for the collection of VAT on international B2C trade. The checklists do this by distilling and mapping out the main messages from all of the key areas that the Toolkit covers: policy, legislation, administration, operational and IT infrastructure, as well as audit and risk management strategies.

## Guide to Section 5

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### 5.1. Introduction

#### Guide to subsection 5.1.

| <b>Section</b> | <b>Theme</b>   | <b>Page</b> |
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VAT systems are defined in substance by two fundamental features.<sup>116</sup> First, the VAT constitutes a broad-based tax on final consumption paid, ultimately, by final consumers. Second, the VAT is collected through a staged collection process by businesses.

While VAT relies on businesses for collection purposes, a necessary consequence of its fundamental features is that the burden of the VAT should not rest on businesses.<sup>117</sup> Put simply, businesses' main role and responsibilities should be limited to their tax collection function. Accordingly, in addressing the role of businesses in the implementation of VAT, tax administrations should be careful to distinguish VAT from

<sup>116</sup> Core features are discussed in detail in Chapter 1 of the Guidelines (see further Annex A).

<sup>117</sup> See Guideline 2.1 of the Guidelines.

taxes whose economic incidence is intended to rest upon businesses, such as income taxes or direct taxes in general.

As with many other taxes, VAT imposes compliance burdens and related financial costs on businesses and administrative burdens and related financial costs on tax authorities. The elimination of undue compliance burdens and disproportionate financial costs for businesses constitutes an element to be carefully considered by tax authorities as part of the neutrality principle. Neutrality is one of the principles that helps to ensure the collection of revenue by governments in the appropriate manner (see the summary of Chapter 2 of the Guidelines in Annex A).

In addition, to promote VAT compliance in international commerce tax authorities should consider appropriate simplification and, as much as possible, consistency of tax compliance rules, because the greater the simplicity and consistency of the rules and obligations for taxpayers, the higher their likely levels of compliance.

A simplified registration and collection regime (“simplified compliance” regime in short), as outlined in the previous sections of this Toolkit, has the potential to properly balance the aforementioned principles and practical elements, particularly from a risk perspective. The experience from jurisdictions that have implemented such regimes following OECD guidance shows that a well-prepared implementation of simple, clear and consistent rules ultimately leads to high levels of compliance. Tax authorities should promote this willingness to comply through adoption of rules that are easy to apply in practice, assistance to taxpayers in complying with these rules, and ongoing dialogue with the business community.

Compliance by major online vendors and digital platforms (that are likely to operate in multiple jurisdictions) with their VAT obligations under existing simplified compliance regimes tends to be very high, especially when rules are clear and consistent with the recommended OECD policy framework. Reputational and regulatory considerations are important drivers for compliance. Many of these platforms are publicly listed, and, accordingly, they are legally obligated to report to market regulators and to their shareholders to provide assurance that they have met their fiduciary and tax obligations, e.g. the requirements under the United States Securities and Exchange Commission (SEC) regulations and the Sarbanes-Oxley Act. The SEC mandates publicly traded platforms to disclose their financial condition, to certify their compliance with regulatory obligations, and to provide information on related issues (e.g. disputes in progress), in annual reports that are available to the public.

### **5.1.1. Purpose and scope of audit and risk management strategies**

One of the primary goals of tax authorities is to collect the taxes payable in accordance with the law and to do so in a manner that will sustain public confidence in the tax system and its administration. Since tax administrations operate with limited resources, both human and material, there is a need to allocate these resources in a manner to achieve the best possible outcome in terms of improved compliance with the tax laws, and an overall strategy is needed to accomplish this objective.

Once a concrete model for the collection of VAT on international trade is established in domestic law in accordance with Sections 3 and 4 of this Toolkit, tax authorities should ensure that all taxpayers respect and comply with these rules. This is particularly important considering that the imposition of VAT on online supplies of services, intangibles, and imports of low-value goods has been adopted by governments notably to create a level playing field between domestic small businesses and non-resident suppliers, and to raise revenue for funding public expenditure. When tax authorities can demonstrate effective enforcement of prevailing law, the behaviour of potentially non-compliant taxpayers can be influenced when they recognise the adverse consequences of non-compliance.

Well-designed, simple and consistent registration and compliance regimes for non-resident suppliers of B2C services and intangibles based on OECD guidance and best practice experiences are the best tools to ensure compliance from the vast majority of businesses. This also allows tax administrations to

concentrate risk mitigation and enforcement actions on the remaining fraction of non-compliant businesses.

### **5.1.2. Risk management under a simplified registration and collection regime**

The OECD guidance note on Compliance Risk Management: Managing and Improving Tax Compliance (OECD, 2004<sup>[87]</sup>) provides a framework for the application of modern principles to the management of tax compliance risks. It also describes a step-by-step strategic process for identification and treatment of those risks. In doing so, it identifies and discusses general principles in both the identification and treatment of compliance risks. The OECD guidance also presents a model of the compliance risk management process for application by revenue bodies.<sup>118</sup> A summary of this guidance note is included in Annex F.1.

The guidance note's compliance risk management model as applied to a simplified compliance regime for non-resident suppliers is outlined below in Box 5.1.

#### **Box 5.1. Compliance risk management model under a simplified registration and collection regime**

##### **1. Identify risks**

The overall strategy to be deployed by tax administrations must first focus on identifying the main risks faced in the implementation and operation of a regime for the collection of VAT on cross-border trade.

This phase of the process provides a list of potential risks. In identifying relevant risks, tax administrations may consider performing environmental analysis, using available information, and focusing on specific categories that are likely to have significant tax revenue consequences if left untreated.

Some risks are internal to the tax administration, such as internal infrastructure and capabilities, and others are external, such as non-resident suppliers' failure to comply with their obligation to register or the inaccuracy of the VAT returns filed by registered non-resident suppliers.

##### **2. Assess and prioritise risks**

Once the critical risks have been identified, tax administrations should assess and prioritise them. Not all risks can (or should) be addressed. What is needed is a balanced approach to the treatment of a wide range of risks.

A balanced approach to risk prioritisation may encompass consideration of some risks that may not reflect the highest immediate revenue exposure. In practice, prioritisation requires an assessment of the frequency, consequences and likelihood of the risks to be covered in an attempt to determine a relative rating of the risks.

##### **3. Analyse compliance behaviour (causes, options for treatment)**

Tax administrations should seek to obtain information and analyse the root causes of each relevant risk. Regarding external risks, the strategies may be different depending on a proper understanding of the reasons for the taxpayer's behaviour, since non-compliance is a complex phenomenon.

It is important to consider that the behaviour or attitude of non-resident taxpayers may differ from the behaviour of the domestic population due to a number of factors discussed later in this section. For example, a non-resident supplier may be unable to register, to make a VAT return, or to pay the VAT for a number of reasons other than deliberate non-compliance, such as, not

<sup>118</sup> CIAT (2020), *Non-compliance Risk Management for Tax Administrations (Manual sobre Gestión de Riesgos de incumplimiento para Administraciones Tributarias)*, available in Spanish) provides an overview and comparison between the OECD and other risk models. The document is available at <https://biblioteca.ciat.org/opac/book/5741>.

understanding how to use the simplified system or not having their own systems configured properly to report and pay. Tax administrations are advised to consider these concerns in their analysis of the development of their strategies.

The insight provided by these analyses will allow tax administrations to customise risk treatment based on the underlying cause of non-compliance and to develop targeted compliance programs.

#### **4. Determine treatment strategies**

Appropriate actions, either preventive and/or corrective, should be considered for each relevant risk. This notably includes the identification of key players and the engagement with them, e.g. through a targeted communications strategy.

Initially, tax administrations should prioritise actions designed to assist non-resident suppliers to comply with their tax obligations.

Establishing a de-registration process for non-resident businesses should also be considered as some non-resident suppliers may establish themselves within the taxing jurisdiction.

#### **5. Plan and implement strategies**

The strategies should be applicable in principle to all VAT taxpayers, whether they are located in the jurisdiction of consumption (e.g. domestic companies required to reverse-charge VAT on B2B inbound supplies) or not (e.g. non-resident suppliers operating from abroad).

In practice, however, the preferred type of control strategy is not necessarily the same for all taxpayers. The applicable control strategy can and should be tailored to the risk profile of the taxpayer or the taxpayer categories under consideration.

### **5.1.3. Limitations to audit and risk management capabilities and processes faced by the jurisdiction of taxation**

The correct application, collection, and remittance of VAT, and the associated reporting obligations, are traditionally the responsibility of suppliers. Relying on suppliers for VAT collection generally operates effectively when the supplier is located in the jurisdiction of taxation because that jurisdiction possesses the authority to impose and enforce collection and related obligations upon the supplier. This is the traditional scenario for tax administrations in terms of audit and risk management.

Domestic businesses and foreign businesses are in different situations in relation to tax administrations. Domestic businesses will generally have a fixed place of business in the jurisdiction from which the business operates, local employees and contact persons, a local bank, local links to the tax authorities, and various forms of identification/registration through bodies such as the local Chamber of Commerce and Trade Registry. Foreign businesses, by contrast, are less likely to have a legal presence, local staff, or links with the local community.

When the supplier is not located in the jurisdiction of taxation, although jurisdictions may possess the legal power to require the supplier to register and to charge, collect, and remit any VAT due, they may nevertheless face practical limitations on their ability to enforce collection and related obligations upon the supplier because of the lack of personal jurisdiction over the non-resident supplier (OECD, 2017<sup>[2]</sup>). It must be recognised, however, that stronger enforcement actions are traditionally used only as a last resort and only in a minority of cases.

### **5.1.4. Importance of information as an input for decision-making**

National circumstances may influence the way in which tax authorities administer a simplified compliance regime and therefore the risks that each jurisdiction identifies for its own situation. In deciding what type of tax risks will be analysed and faced by the tax authorities, jurisdictions should recognise that one size does

not fit all countries. With that caveat acknowledged, this section nevertheless proceeds to consider further general criteria and recommendations regarding the audit and risk management under a simplified compliance regime.

Access to relevant information is a key element in the process for developing an efficient system of risk analysis and tax audit. Ideally, this access should be as broad as possible, as close as possible in time to the taxable event and take account of information that can be analysed within a reasonable time frame by the tax authorities. The phrase “*data is the new gold*” is frequently used in business environments and reflects the fact that obtaining accurate and reliable data is generally essential for business purposes because of the insights that data can generate. The same conclusion is applicable to the data collected by the tax authorities to carry out risk analysis and tax audits, especially in the digital business environment.

Major business enterprises operating in LAC jurisdictions usually carry out their activities through regional data centres or by using third-party providers with a similar infrastructure, including data processing and storage. For tax administrations in LAC jurisdictions, this means in practice that relevant information will in most cases be stored abroad.

Tax administrations may have limited power to enforce data reporting from businesses located abroad. Besides the lack of direct enforceability, access to this data may be affected by legal restrictions at the source (such as personal data protection statutes, commercial privacy rules, among others). Businesses may also attempt to limit access to data held in offshore jurisdictions. Practical elements such as data coding, currencies, TIN, account numbers and languages used, among others, also deserve consideration.

In order to encourage digital platforms and other non-resident suppliers to voluntarily provide the relevant information, tax authorities need to understand the issues that these entities confront in providing data. In this context, the following issues need to be considered by tax authorities:

- Language differences may introduce additional complexity if not properly addressed. LAC jurisdictions are advised to make all relevant information, including clear guidance on the main aspects of their regime, available to non-resident suppliers in English and the languages of the jurisdiction’s major trading partners. In addition, the wording in the language(s) employed should be kept simple and clear to avoid any confusion.
- The nature and extent of the data that businesses are required to transmit to tax administrations should be clearly defined and limited to what is necessary to establish their tax liability. When a tax authority already has transactional information from a third-party source, there is no need to require the reporting entity to provide the same information. This assumes, of course, that the tax authority has an appropriate level of confidence in the quality of the third-party data, and tax authorities should take appropriate steps to develop an appropriate level of confidence in the data obtained from third parties.
- Privacy concerns. Most suppliers access personally identifiable information (PII) from their customers for their business purposes. The type and amount of PII varies from business to business, but it may include: ID and/or passport information, financial information, biometric information, private personal phone numbers, among others. Customer trust and, in this context, the protection of customers’ data are usually considered crucial for business success. Financial information (such as credit and debit card numbers and banking accounts) is considered particularly sensitive because of the direct monetary consequences of any potential data breach, and such information is therefore usually subject to special security measures. In addition, compliance with local and/or international data protection laws and regulations play a role. This can lead to suppliers being unable or reluctant to share transactional PII data, particularly when the relevance of PII data for tax purposes is not clear. Tax administrations should limit their requests to information necessary for making tax determinations.

Tax administrations of the country where the tax is due may wish to consider new or complementary means for obtaining relevant VAT information. Experience from jurisdictions operating a simplified compliance regime strongly indicates the importance and usefulness of data obtained from reliable domestic sources,

notably sources related to the financial or banking system. This is due to the fact that settlement of transactions effectuated in electronic commerce are generally made through credit and debit cards and similar means of payment, and transactions of this nature generally are evidenced in the financial or banking system. Such evidence can provide tax authorities with highly useful data for audit and control purposes. The use of domestic sources allows for better enforceability by tax administrations because tax administrations have personal jurisdiction over the requested domestic entities.

## 5.2. External audit and risk management

### Guide to subsection 5.2

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#### **5.2.1. Main risks associated with the implementation and operation of a simplified compliance regime – Key elements of audit and risk management strategies**

From a VAT compliance and control perspective, the application of a regime for the collection of VAT on international supplies by non-resident suppliers presents a number of common risk patterns. Some of the VAT risks are directly related to the loss of public revenues, while others, like non-compliance with formal obligations, may indirectly jeopardise confidence and faith in the integrity of the VAT system and in a jurisdiction's willingness or capacity to enforce the rules consistently on all businesses.

##### **(i) Main categories of risks**

From a legal perspective, compliance risks associated with the operation of a simplified VAT compliance regime can be classified in three main categories: a) Risks associated with the lack of clear rules or of consistency in the law; b) Risks of unintentional non-compliance and c) Risks of intentional non-compliance.

**a) Risks resulting from unclear or inconsistent VAT rules**

Unclear or inconsistent legislation leads to an increased risk of non-compliance or unintentional errors in the application of the tax. It is therefore important that tax authorities provide the clearest possible rules and guidance. Consistency of a jurisdiction's rules with OECD guidance and international best practices will further support compliance considerably.

Particular attention should be paid to the following elements in Table 5.1:

Table 5.1. Examples of risks resulting from unclear or inconsistent rules under a simplified compliance regime

| Element   | Risk   | Recommended strategy   |
|---|--|--|
| <p><b>Determination of customer status: B2B or B2C?</b></p> <p>According to the Guidelines, jurisdictions may opt to implement a reverse charge mechanism for the collection of VAT on supplies of services and intangibles by non-resident suppliers to business customers in the jurisdiction (B2B supplies)<sup>119</sup>. Put simply, this means that VAT is charged by non-resident suppliers only to final consumers and not to (VAT registered) business clients, who are required to self-assess (account for and remit) the VAT on the services and intangibles purchased from non-resident suppliers.</p> | <p>Inability to differentiate between B2B (where no tax collection obligation applies for non-resident suppliers) and B2C (tax collection obligation) transactions.</p> <p>In order to avoid potential liability for any VAT that may not have been charged incorrectly, suppliers may choose to collect VAT on all supplies, including B2B supplies.</p> <p>This creates undue compliance administrative and compliance burdens, including cash-flow costs for business customers and from businesses seeking refunds of VAT incurred abroad.</p> | <p>Tax authorities should consider implementing rules and/or mechanisms to assist suppliers to differentiate B2B from B2C transactions.</p> <p>In most cases, the VAT ID number may be a good indicator of the customer's business status, at least as a presumption of the business status of the customer. Tax authorities are encouraged to develop tools for the suppliers to check the validity of VAT numbers<sup>120</sup>.</p> <p>If there is a mechanism in place and there is nevertheless widespread misapplication of the law, then the tax authority may need to directly engage with the suppliers to correct their processes.</p> |
| <p><b>Determination of whether a transaction falls within or outside the scope of the regime, especially for regimes based on listed services and intangibles.</b></p> <p>Services and intangibles covered by the regime may be defined through general criteria<sup>121</sup>, or through a specific list</p>  | <p>Incorrect determination of the transaction as being either subject or not subject to taxation under a jurisdiction's regime targeted at non-resident suppliers.</p> <p>If VAT is not charged on taxable transactions: VAT revenue losses and potential unpaid liability and penalties</p>   | <p>Tax authorities should minimise uncertainty by providing robust and clear public guidance and implementing taxpayer assistance channels.</p>  |

<sup>119</sup> However, it is recognised that a simplified compliance regime need not necessarily be confined to B2C supplies. Jurisdictions may choose to implement a simplified registration and collection regime for both B2C and B2B cross-border trade. This could be appropriate, for example, if a VAT regime does not generally distinguish between B2C and B2B transactions.

<sup>120</sup> The EU VAT VIES (VAT Information Exchange System) database provides to EU Intra-Community suppliers the possibility to check in real time the validity of the VAT numbers of their customers. This helps them to decide whether to charge domestic VAT on the assumption the customer is a consumer or to consider the transaction subject to taxation in the country of destination as a B2B supply.

For more information (in Spanish) please see: [https://ec.europa.eu/taxation\\_customs/vies/?locale=ES](https://ec.europa.eu/taxation_customs/vies/?locale=ES)

<sup>121</sup> General criteria provided for instance in the EU VAT implementing regulation (Art. 7 of the Council Implementing Regulation (EU) No 282/2011) "Services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology." Besides this general definition, the EU law provides a non-exhaustive list of services included and

| Element   | Risk  | Recommended strategy  |
|---|---|---|
| of items (exhaustive or non-exhaustive) or through a combination of both approaches.      | for the non-resident supplier.<br>If VAT is incorrectly charged on non-taxable transactions: consumers may seek a refund, which may lead to administrative costs and reputational risks for the tax authority. There should also be a mechanism in place for businesses to restore incorrectly charged VAT. |   |
| <b>Application of proxies and criteria/indicia for determining the place of taxation.</b> | Proxies failing to clearly provide determination of where the tax is due (ineffective definition of the consumer's usual residence).<br>If VAT is not charged on taxable transactions: VAT revenue loss and potential liability for the non-resident supplier.  | Tax authorities should establish clear rules governing the application of proxies for determining the place of taxation, by reference to the customer's location (place of usual residence in B2C supplies of services and intangibles). Robust guidance on the interpretation of these rules is further required.<br>Proxies should be based on features of the supply that are known by or knowable to suppliers at the time the tax treatment of the supply must be determined.<br>When designing and implementing their rules and requirements for determining and evidencing the customers' usual residence with respect to B2C supplies of services and intangibles as recommend by the Guidelines, tax authorities should consider:<br>- Requiring substantiating the determination of the place of taxation (two non-contradictory pieces of information, when available, appears to have the potential to provide a satisfactory level of certainty).<br>- Implementing a fallback rule in cases where no or limited reliable information is available.<br>- In addition, safe harbour rules ("good faith" provisions) |

excluded from the scope of the definition. Similar combination of both general criteria and specific lists can be found, e.g. in the Argentinian, Mexican, Ecuadorian and Costa Rican laws, while the Chilean law provides a specific list of digital services. However, in practical experience, it is not always easy to conclude what 'minimal' human intervention means. As for the specific lists of services covered, some issues have been raised regarding communication or education services as a concept that is distinguishable from digital services. The future evolution of the digital economy will produce additional types of services, and the question of whether and the extent to which they are included in the scope of the VAT law may be challenging.

| Element  | Risk   | Recommended strategy  |
|--|--|---|
|  |  | may provide certainty in the practical application of the proxies, such as a hierarchy amongst the different proxies or a liability exemption when a certain criterion has been used to determine the place of taxation (e.g. the Internet Protocol (IP) address) and other proxies lead to a different conclusion. |
| Potential application of different VAT rates to services and intangibles supplied by non-resident suppliers. | <p>Incorrect application of the VAT rate.</p> <p>If the VAT rate used is lower than the correct one: VAT revenue loss and potential liability for the non-resident supplier.</p> <p>If the VAT rate used is higher than the correct one: consumers may seek a refund, which may lead to administrative costs and reputational risks for the tax authority.</p> | <p>Tax authorities should establish clear rules governing the application of VAT rates.</p> <p>Robust guidance on the interpretation of these rules is also required.</p> <p>Access to VAT rates information should be easily accessible.</p>   |

### **b) Risks of unintentional non-compliance**

The second group of tax compliance risks is associated with unintentional taxpayer behaviours. The main driver is the lack of awareness of the existence of an obligation or of all the requirements to fulfil it accurately.

Tax authorities should consider measures to ensure full awareness of the main VAT obligations under a simplified compliance regime with respect to every potential taxpayer.

The type of risk in question is associated primarily with VAT registration, reporting, and record-keeping obligations and, potentially, with specific requests made by tax administrations.

### **c) Risks of intentional non-compliance**

The third group of tax compliance risks is associated with deliberate or intentional actions. Taxpayers in this group will either comply only if the tax authorities detect their behaviour and compel them to correct it or, alternatively, they will not comply under any circumstance. Examples of such behaviour include:

- The taxpayer's complete and deliberate failure to VAT register. The consequence of this deliberate action is a loss of VAT revenues due to the failure to make VAT returns.
- Under-declaration of transactions or no submission of VAT returns at all.
- Undervaluation of imported goods, in particular when the domestic law provides a VAT exemption for low-value goods.
- Situations when the customer deceives the good-faith seller. Customers may improperly seek to obtain a lower price by not paying VAT on their purchases. In this context, some actions, such as deliberate efforts to circumvent the allocation proxies for VAT (e.g. IP address circumvention, use of offshore bank accounts to pay instead of more traceable means of payment) must be monitored. In other cases, private consumers may misrepresent themselves as businesses (by 'hijacking' VAT numbers) so that the supplier treats the supply as a B2B transaction subject to the reverse charge mechanism, and consequently, charges no VAT at all to the recipient.

#### ***(ii) Risk management during the various stages of implementation and operation of the simplified compliance regime***

Risks associated with a simplified compliance regime can be identified and prioritised according to the different stages of implementation of the law, in a sequential approach.

The proposed sequencing is merely indicative and seeks to reflect the fact that tax administrations are strongly advised to focus initially on the "big issues" and then move gradually towards more complex and potentially resource-intensive concerns.

As a general principle, tax administrations should calibrate their strategies and/or actions according to defined objectives and the severity of the case.

## **1. Preparatory phase**

Prior to the date of entry into force of the reform onwards.

### **What are the main risks to prioritise during this phase?**

This phase comprises all the activities required for a successful commencement of the simplified compliance regime.

#### Outstanding risks:

- Tax administration failing to create the appropriate supporting infrastructure in a timely manner. This comprises the registration and compliance portal (for implementation details, see Section 4)
- Non-resident suppliers failing to register. A successful implementation requires VAT registration of the highest possible number of suppliers under the simplified compliance regime. Tax administrations should manage this risk by prioritising the relative size and economic impact of the suppliers.

#### What are the potential causes?

##### *Supporting infrastructure*

Internal risk aspects will be addressed in subsection 5.3.

##### *Failure to register*

Potential causes include:

- a) Ignorance: Non-resident suppliers may genuinely lack awareness of their VAT obligations outside of their jurisdiction of establishment. The lack of awareness may be due to:
  - Ignorance of the existence of the law.
  - Ignorance of the effect of the law on a given business's operations.
  - Belief that a foreign jurisdiction has no legal right to impose an obligation on a non-resident entity to collect and remit a tax.
- b) Disengagement: Suppliers may adopt a posture of disengagement for a number of reasons, including:
  - Costs of compliance leading to an unwillingness or inability to make the necessary investment in business systems to comply with the law.
  - Embrace of a 'wait and see' position – engage only if contacted by the tax authority.
  - Desire to obtain a commercial advantage with respect to pricing.
  - Poor client experience resulting from systems issues creating difficulties in accessing and using the simplified registration process.
  - Scamming concerns – the entity may not believe the tax authority's engagement as legitimate and, in fact, view it as a scam.
  - Disengagement may also manifest itself in the compliant population if it believes that non-compliant competitors are not receiving appropriate and effective treatment by the tax authority.

#### What treatment strategies are appropriate? How can these be implemented by tax administrations?

##### *Failure to register for VAT under the simplified compliance regime*

Tax administrations should focus their efforts primarily on determining the relevant non-resident supplier population and its principal characteristics, including:

- Who are the principal non-resident suppliers operating into the domestic market?
- What are the main business models under which they operate?
- Where are the main economic areas in which they operate?
- What are the languages they use?
- Are there any significant barriers for liaising with them?
- Other characteristics.

Best practices on how to perform this analysis are discussed in subsection 5.2.2.

Using the results of this analysis, tax administrations should consider the following strategies:

- Targeted communication, including the following elements:
  - Prioritisation of taxpayers according to their relative size in the jurisdiction's domestic market and potential revenue.
  - Co-operation with business chambers of commerce and similar organisations.
  - Potential use of international administrative co-operation in order to obtain contact details of suppliers subject to tax compliance obligations.

See subsection 4C.4 for further considerations on communications strategies.

- Timely education and assistance. Elements to consider:
  - Dedicated web page, video tutorials, and guides.
  - Seminars.
- Dedicated team to proactively follow up with non-responsive entities.

## 2. Implementation phase

From the date of entry into force of the reform onwards.

### What are the main risks to prioritise during this phase?

Tax administrations should continue carrying out strategies to minimise non-resident suppliers' failure to register, as the risks identified for the previous phase may continue during this period. However, priority may be shifted towards the risks that arise following the entry into force of the law. Outstanding risks in this phase are, in principle, related mostly to the VAT return process, including:

- Late filing and/or payment.
- Failure to report.

Both risks should be addressed simultaneously. The key objective is to maximise compliance.

### What are the potential causes?

Potential causes may include:

#### *Late filing and/or payment*

- Poor understanding of the rules in place or the effect of the law on a given business's operations.

#### *Failure to report*

- Cost of compliance leading to an unwillingness or inability to make the necessary investment in business systems to comply with the law.
- Poor client experience resulting from systems issues make it difficult to access and use the simplified compliance process.
- Part of the originally compliant population failing to report if they perceive that non-compliant competitors are not subject to appropriate and effective oversight by the tax authority.

**What treatment strategies are appropriate? How can these be implemented by tax administrations?***Late filing and/or payment*

- Targeted communication, notably due-date reminders.
- Civil penalties that create an incentive for timely filing and payment. However, concessional treatment following implementation is advised. This topic is analysed in subsection 5.6.
- Dedicated team to proactively follow up with non-responsive entities and investigate the underlying causes of non-compliance.

*Failure to report*

- Targeted communication requiring unresponsive suppliers to comply with local rules in the jurisdiction of consumption.
- Dedicated team to proactively follow up with non-responsive entities and investigate the underlying causes of non-compliance.
- Undertaking audits leading to assessments of the VAT due and applicable penalties. Jurisdictions may consider requesting assistance in tax recovery, if this is authorised by domestic law.
- Consideration of backstop measures addressed to non-compliant suppliers, e.g. VAT withholding through payment service providers in specific cases. This topic is analysed in subsection 5.6.4.

### 3. Maturity phase

Post implementation once the law has settled in and onwards. Tax administrations can move towards addressing more complex risk management issues at this stage.

#### What are the main risks to prioritise during this phase?

Tax administrations should continue carrying out strategies to avoid risks identified in previous stages, as these risks may continue to exist during this period. However, priority should shift towards more complex issues.

Outstanding risks identified in this phase are:

- Inaccurate reporting. The key objective is to maximise voluntary compliance and encourage rectification of errors.
- Customer misrepresentation.

#### What are the potential causes?

Potential causes may include:

##### *Inaccurate reporting*

- Poor understanding of the rules in place or the effect of the law on a given business's operations.

##### *Customer misrepresentation*

- Desire to obtain an advantage with respect to pricing (avoid VAT being charged).
- Perception of low risk, e.g. due to a perceived lack of tax administrations' capability of detecting this behaviour.

#### What treatment strategies are appropriate? How can these be implemented by tax administrations?

##### *Inaccurate reporting*

- Tax administrations should focus primarily on the development of techniques to quantify or determine the volume of transactions and suppliers' VAT liability, e.g. using third-party data, where available, to check the integrity of amounts being reported. The development of these methods requires a knowledge base that is not likely to be available in earlier stages. Subsection 5.2.2 provides elements for further consideration.
- Timely education and assistance as preventive action.
- Dedicated team to liaise with entities and investigate the underlying causes of non-compliance.
- Undertaking of audits, particularly in serious or outstanding cases.
- Criminal prosecution as last resort in exceptional wilful misconduct cases.

##### *Customer misrepresentation*

- Development by tax administrations of methods to quantify or determine the volume of B2B transactions in comparison to B2C transactions, and other related analysis.
- Legal framework for civil penalties and criminal prosecution to discourage this behaviour. These topics are analysed in subsection 5.6.

#### Continued efforts to support compliance

During the maturity phase, tax administrations can consider the appointment of dedicated relationship managers to ensure that any issue with non-resident suppliers under a simplified compliance regime can be resolved quickly, in particular for the larger non-resident suppliers and digital platforms, which are likely to be the primary source of VAT revenue under a simplified compliance regime.

## 5.2.2. Examples of country initiatives and best practices

### (i) Extensive use of third-party transactional data to assist compliance monitoring

Data made available by taxpayers under record-keeping obligations are generally a primary source of information for compliance monitoring. However, in the context of a simplified compliance regime, third-party sources of information have proven to be a very useful tool for accessing data, in particular transactional data, which are not regularly available through direct sources.

Third-party transactional data may be particularly relevant in the context of a simplified compliance regime, notably in order to:

- Identify the taxpayer population and in particular to detect non-registered businesses.
- Detect filing inconsistencies or under-declaration.
- Allow tax administrations to acquire a better knowledge of the economic sectors and/or of the risks faced.

If they have not already established the legal framework for the right of their tax administrations to access third-party information, LAC jurisdictions are advised to take the appropriate legislative action to establish such right. Potential sources of transactional data include:

- State agencies and private entities involved in the financial sector (e.g. regulatory agencies, financial intelligence units, banks, etc.).<sup>122</sup>
- State agencies or private entities involved in goods trade (e.g. customs authorities, postal services and express carriers).
- Online marketplaces and other digital platforms, where they are not already subject to a full VAT liability regime under domestic law.

Data held by these entities may provide tax administrations with crucial information regarding the transactions under consideration. It is difficult to foresee an efficient system of tax risk analysis of highly digitalised business models if the relevant information is not legally accessible by tax authorities. Subsection 4C.4.2 analyses this topic from the perspective of the implementation of a simplified compliance regime.

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<sup>122</sup> The analysis in the CIAT blog post *Access to financial information a pillar of tax transparency and the fight against fraud* by Isaac Gonzalo Arias Esteban and Alberto Barreix (available at <https://www.ciat.org/access-to-financial-information-a-pillar-of-tax-transparency-and-the-fight-against-fraud/?lang=en>), highlights the importance for the tax authorities of the CIAT Member States to have legal powers to access information held by banks or financial entities, especially in the era of digitalisation. The publication indicates that 32 of 36 countries included in CIAT's Tax Transparency and Co-operation database (which includes both CIAT member and non-member countries in the Americas, Africa, Europe and Oceania) empower their tax administrations to access domestic financial information. However, 30 of 36 surveyed countries provide access to such data without the need to obtain judicial authorisation.

### Box 5.2. Country examples

- The Australian Taxation Office has access to information held in AUSTRAC, which is Australia's financial intelligence unit. Through this information, it has traced funds flowing to drivers and renters from overseas to local banks, from which they are distributed in order to identify unregistered business activity such as taxi-style drivers operating through sharing economy digital platforms. Thus far, it has been able to identify a large portion of drivers.
- An European Union harmonised reporting obligation has been introduced for Payment Service Providers (PSPs) as a tool to better control VAT compliance and VAT fraud and to support the implementation of the new EU e-commerce legislation effective 1 July 2021. The EU reporting system package for PSPs was approved on 18 February 2020 and will enter into force on 1 January 2024.<sup>123</sup> It will cover essentially international cross-border payments, corresponding mainly, but not exclusively, to cross-border B2C supplies of goods, services, and intangibles. The collected information will include the identification of the payee and payment details but will not include the underlying transaction details nor indicia of identification belonging to the payor. Assuming that a specified number of transactions provides an indication of business activity carried out by the payee, the reporting obligation will cover only those payees receiving more than 25 cross-border payments during a calendar quarter. Authorised national tax officers will have access to the new and specific database created with the reported information.
- Austria applies a platform-reporting regime to complement its full VAT liability regime for digital platforms. Platforms are required to electronically provide predetermined data to identify underlying suppliers and their respective turnover from supplies to consumers in Austria made via the respective platform. The obligation is limited to supplies for which the platform is not fully liable. The reporting regime aims at facilitating the detection of non-compliant suppliers and the application of enforcement measures. It also has a preventive effect, as taxpayers are aware that their activity is not unnoticed by the tax administration. A joint and several liability for digital platforms in certain limited predefined cases complements this regime.
- Banks in Chile are required to provide quarterly information to the Chilean tax administration (SII) regarding payments made through credit cards, debit cards or similar means to non-resident suppliers. Using this information, the SII has determined (as of September 2020) that the platforms registered under the Chilean simplified compliance regime represented 90% of the total number of individual transactions and nearly 80% of the monies paid abroad by credit or debit cards through the Chilean banking system.

Source: OECD (2017), *Technology Tools to Tackle Tax Evasion and Tax Fraud* (OECD, 2017<sup>[88]</sup>); EU Council; Austrian Federal Ministry of Finance at [https://www.bmf.gv.at/en/topics/taxation/vat-assessment-refund/Recording-Obligations-for-Electronic-Interfaces-\(Platforms\)-.html](https://www.bmf.gv.at/en/topics/taxation/vat-assessment-refund/Recording-Obligations-for-Electronic-Interfaces-(Platforms)-.html); Chilean Tax Administration (Servicio de Impuestos Internos) at <https://www.sii.cl/noticias/2020/021020noti02er.htm>

<sup>123</sup> For more information, see the EU Council webpage: *E-commerce: Council adopts new rules for exchange of VAT payment data* at <https://www.consilium.europa.eu/en/press/press-releases/2020/02/18/e-commerce-council-adopts-new-rules-for-exchange-of-vat-payment-data/>;

or, in Spanish language, the web page of the Spanish State Tax Administration (AEAT): *Modificación Directiva IVA y Reglamento (UE) 904/2010: medidas para reforzar la detección del fraude fiscal en transacciones transfronterizas de comercio electrónico* at [https://www.agenciatributaria.es/AEAT.internet/Inicio/ Segmentos /Empresas\\_y\\_profesionales/Empresas/IVA/Novedades en IVA/Publicadas en 2020/Modificacion Directiva IVA y Reglamento UE 904 2010 medidas para reforzar la deteccion del fraude fiscal en transacciones cio electronico.shtml](https://www.agenciatributaria.es/AEAT.internet/Inicio/ Segmentos /Empresas_y_profesionales/Empresas/IVA/Novedades en IVA/Publicadas en 2020/Modificacion Directiva IVA y Reglamento UE 904 2010 medidas para reforzar la deteccion del fraude fiscal en transacciones cio electronico.shtml).

### *(ii) Development of tools to combine data and analytics*

A number of tax administrations have adopted a data analytics strategy in order to obtain and process data not available through reporting or record-keeping obligations or third-party sources.

Tax administrations' proper use of the information is essential to obtaining the full benefit from the use of data analytics and risk analysis. For example, inadequate risk governance and knowledge management may result in different parts of the tax administration using different approaches for the same cases. Another common problem arises from the partial use or the failure to use the results of the analysis due to the inability to make these results available to appropriate tax auditors.

Subsection 4C.4.2 analyses this topic from the perspective of the implementation of a simplified compliance regime.

#### **Box 5.3. Country examples**

- Austria uses Internet monitoring that utilises different Internet scraping tools (web harvesting or web data extraction), some of which are open source and others which are custom-made. The result of this work feeds into compliance measures such as letters to presumptive taxpayers and information campaigns.
- Belgium uses Internet scraping and data mining, in conjunction with other data analytics tools, including a 'Forensic Toolkit' to collect and cull data in a forensically based fashion; Accounting Command Language to analyse semi-structured data that allows importing of data from accounting packages to create a 'standard audit file' and to perform a range of automated checks; and an e-discovery solution to analyse unstructured data such as e-mail and PDF documents for risk assessment purposes. E-discovery solutions are packages that may integrate data acquisition, data conversion, data indexing, advanced analytics and information presentation in order for users to analyse large volumes of unstructured information, e.g. for forensic information analysis.
- Finland has legislation that allows for audits and collection of data aimed at identifying sharing economy actors, as well as the monitoring of online credit/debit card payments to detect unregistered remote sellers. Data is filtered and clustered by using scripts. Where a significant volume of payments is identified as being made to an unknown person, this can be investigated to determine if the person is an unregistered business.
- Japan uses a general search engine to gather information regarding information-providing services offered through the Internet, such as fee-charging websites, in order to identify suspected online businesses. After detecting a specific suspicious company, comprehensive information is collected through the Internet that enables a comprehensive Internet-based search. Thus, a variety of data is collated in a database and matched against taxpayers in the tax authority's system. This matching system enables the tax authority to visualise the risks for each taxpayer.
- In Spain, publicly available sources of information (websites, social networks) have been used to detect tax infringements such as unregistered economic activities, and under-reported values for supplies (e.g. information posted on websites has been used as a source to check actual prices against prices reported by taxpayers to the tax authorities).
- The United Kingdom uses a product that automates the collation and filtering of data posted on social media and websites ("COSAIN"). The tool can notably be used to monitor trends within a geographic area or specific business sector. These types of tools are expected to allow more robust analysis of the e-commerce sector by tax authorities, by collating and filtering relevant data from key social media and e-commerce websites.

Source: OECD (2017), *Technology Tools to Tackle Tax Evasion and Tax Fraud* (OECD, 2017<sup>[88]</sup>).

### (iii) Remote audits

The evolution of information technologies applied to tax compliance and control procedures allows new means of contact and interaction between the tax authorities and the taxpayers subject to a tax control. One of these new possibilities involves remote tax audits, i.e. audits without the physical presence of the tax officials on the premises of the taxpayer.

A remote tax audit should include the power for the tax officers to access in real-time the registers, accounting, and other relevant documents of the taxpayer. It should also include the possibility for both parties to remotely and securely sign relevant tax documents and preserve them in an electronic file.

Because of their advantages in terms of efficiency and cost reduction through elimination of physical visits, remote audits may play a significant role when the taxpayer has no permanent establishment or physical presence in the jurisdiction where the tax is due.

Despite their advantages, remote tax audits also raise challenges in connection with their use as an effective tool in the context of a simplified compliance regime, due primarily to their limited enforceability in respect of foreign entities. The accessible information is likely to be limited to the information that the taxpayer is willing or capable to share with the tax authorities. Concerns about the security of the communication channel and other IT aspects may also create barriers to the communication of sensitive information.

#### Box 5.4. Country example

One noteworthy example is the recently introduced system of virtual visits (VIVI) in Spain. Entering into force and implemented in practice since June 2020, the Spanish system includes the possibility of signing and exchanging records or other documents electronically, just as would normally occur in a face-to-face meeting. The use of this remote tax audit system is optional for the taxpayer.

The Spanish VIVI includes or is connected to the following tools:

- a) A videoconferencing system
- b) An electronic registry to load documentation delivered by the taxpayer
- c) The electronic signature of both the tax official and the taxpayer
- d) Access for the tax official to all relevant information in the electronic file of the taxpayer

The project started before the outbreak of the COVID-19 pandemic, but the outbreak has enhanced the use of such tools to ensure the continuity of the business and the safety of taxpayers and tax officials. The Spanish Tax Administration has accordingly taken this opportunity to speed up the effective implementation of its virtual visit program. As a consequence, the General Law on Taxation (*Ley General Tributaria*) has been modified to allow the use of this tool and extend its scope.

Source: Spanish Tax Administration (Agencia Estatal de Administración Tributaria).

#### **(iv) Real-time invoice reporting obligations**

Real-time invoice reporting for VAT purposes can encompass a variety of approaches,<sup>124</sup> but generally speaking describes a system under which businesses must communicate the content of their invoices (in whole or in part) to the tax authorities in real time, or during a very short period after the transaction has been completed. Existing real-time reporting approaches generally involve the electronic submission of required information to the tax authorities. In some jurisdictions of the LAC region, the introduction of real-time reporting systems has been coupled with mandatory electronic invoicing systems.<sup>125</sup>

A number of jurisdictions in the LAC region require the issuance of customer-issued invoices on B2B transactions with non-resident suppliers where the reverse-charge mechanism applies.<sup>126</sup> In these cases, the requirement falls on the domestic entity. Reporting obligations of customer-issued invoices, when applicable on inbound B2B transactions subject to reverse-charge, have the potential to provide tax administrations with useful data to detect and quantify economic activity from abroad and the monetary amounts involved in B2B transactions. Subtracting these amounts from other available information (e.g. the information on payments made abroad from the country of consumption) can assist tax administrations in determining the approximate levels of B2C transactions in a particular country for a specified period.

#### **5.2.3. Legal powers to access tax relevant information**

To perform effective risk analysis and maintain effective tax auditing systems, tax administrations need adequate legal powers to access tax-relevant information. The extent and characteristics of those powers may vary, depending on many factors, especially how and where taxpayers and intermediaries choose to hold the desired information (domestically or in another jurisdiction).

As a general principle, the non-resident supplier's obligation to keep records and to provide access to the tax authorities should not be conditional or dependent on whether the information is held locally (i.e. within the jurisdiction of consumption) or abroad. Safeguarding the equal treatment of suppliers, regardless of whether they are established in the taxing jurisdiction or abroad, is one of the justifications underlying this principle. If the absence of a permanent establishment or of data storage in the jurisdiction, where the non-resident supplier is legally subject to VAT rules releases it from the obligation to provide relevant information to the tax authorities in that jurisdiction, this would lead to an uneven treatment to the non-resident supplier's advantage. A jurisdiction's legal framework is thus recommended to establish the obligation for non-resident suppliers and other relevant stakeholders (e.g. digital platforms under a full VAT liability obligation) to provide the appropriate VAT-relevant information to the tax authorities under a simplified VAT compliance regime, regardless of their place of establishment or where the information is held.

Notwithstanding the foregoing, tax authorities are encouraged to carefully consider any requirements to provide transactional data and to limit such requests to specific cases, e.g. to support audit or enforcement action. As noted in Section 4, jurisdictions that have successfully implemented the recommended policy

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<sup>124</sup> Noteworthy experiences of real-time reporting in place in the European Union are the Italian, Hungarian and Spanish systems, with notable differences amongst them.

<sup>125</sup> For more information about the electronic invoicing systems in Latin America and their results in terms of revenues, see the CIAT and IDB joint publication: Barreix Alberto and Zambrano Raul (2018), *Electronic invoicing in Latin America (Factura electrónica en América Latina)*, original in Spanish; English summary available) at <https://publications.iadb.org/publications/english/document/Electronic-Invoicing-in-Latin-America.pdf>.

<sup>126</sup> See for example Chile (purchase invoice - *factura de compra*); Colombia (supporting document in acquisitions made from persons not required to issue invoices - *documento soporte en adquisiciones efectuadas a sujetos no obligados a expedir factura de venta*); Costa Rica (electronic purchase invoice - *factura electrónica de compra*); Ecuador (liquidation of goods and services purchases - *liquidaciones de compra de bienes y prestación de servicios*); Paraguay (self-invoice - *autofactura*); Peru (purchase liquidation - *liquidación de compra*), amongst others.

framework for the collection of VAT from non-resident suppliers have generally not required that transactional data be provided as part of the filing of the regular VAT returns.

Tax authorities' power to access and process data regarding private individuals may raise particular concerns. These concerns have arisen particularly in respect of B2C online supplies of goods and services that may be inherently sensitive from a privacy perspective (e.g. gambling, healthcare, dating, etc.). Access for tax authorities to private individuals' information to identify consumers of identifiable goods or services for private use, could be legally problematic from a privacy protection perspective and should thus be approached with great care.

The storage of records should facilitate timely access to non-resident suppliers' relevant records in a readable format for the tax administration in the taxing jurisdiction, in order to allow the tax administration to verify each supplier's compliance under the simplified compliance regime in an efficient and expeditious manner.

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

Tax authorities may wish to consider allowing remote storage, i.e. outside the taxing jurisdiction, in an electronic format and in conformity with the relevant privacy protection rules.

Remote storage could, under appropriate circumstances, allow suppliers to keep centralised records for all the jurisdictions in which they have VAT liabilities under these jurisdictions' registration and collection regimes and provide these jurisdictions access to these records as and when required. This would considerably reduce the associated compliance costs for suppliers and is likely to benefit the quality of the records that they keep. In such circumstance, suppliers would be obligated to maintain only one record-keeping system instead of a variety of records that may differ from jurisdiction to jurisdiction while addressing potential issues with conflicting national data privacy laws.

Limitations of access to financial information (e.g. payment details) and data protection regulations (e.g. consumer identity or transaction details) may be different in the taxing jurisdiction compared to the jurisdiction where the information is held. In a number of cases, legal bases exist or could be created to ensure the transfer of such information between jurisdictions, such as on the basis of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD/Council of Europe, 2011<sup>[89]</sup>) (see subsection 5.7.3 and Annex I).

In order to increase the efficiency and capabilities of tax authorities' systems to analyse massive amounts of data from different sources, governments should consider implementing measures to facilitate co-operation and information exchange between domestic public agencies.

Tax authorities may consider establishing sanctions in cases of non-compliance with legal requirements to provide access to VAT-relevant data. Although the jurisdiction's primary aim should be to encourage compliance, a sanctions system may be needed to preserve fair competition and consistency amongst domestic and foreign vendors.

Taking a broader view of transactional data, especially as they relate to non-compliant businesses, tax authorities may need to consider other sources of transactional data, as discussed in subsection 5.2.2.

## 5.3. Internal audit and risk management

### Guide to subsection 5.3.

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Risk management in the context of a simplified VAT compliance regime for non-resident suppliers should also involve the analysis of the risks that arise within tax administrations. Internal risks, especially information security risks, may affect the effectiveness of the measures implemented by tax administrations to apply VAT to international transactions. Specific risk management strategies can be applied, as appropriate, to mitigate those risks to the extent feasible.

A number of key internal capabilities affect risks associated with the administration of a simplified compliance regime. These include (OECD, 2004<sup>[87]</sup>):

- **Information technology and business systems.** Acknowledging the important role of technology for the simplification of administration and compliance, the Guidelines recommend that jurisdictions adopt electronic processes for non-residents accessible through the tax authority's website as the simplest way to engage with tax administrations from a remote location. The implementation and operation of these processes and supporting infrastructure should be considered as an organisational objective by tax administrations.
- **Organisational culture.** Organisational commitment, staff and management buy-in is essential for the effective operation of any compliance risk management system. This in turn is created by a clear and demonstrable commitment from the organisation and its leaders to any new compliance strategy, as well as sensitive management to foster common understanding and acceptance.
- **Organisational structure.** Authorities need to maintain an ongoing evaluation of the operational context in light of the compliance risk management process and its outcomes.
- **Staff and business capabilities.** Developing an organisation's skills involves both training people to design and operate systems and to engage in research and intelligence activities. Jurisdictions should consider the importance of adequate coordination between tax and IT specialists. This coordination will enhance the adequate use of data and the design of systems aligned with business needs.

### Box 5.5. Enterprise risk management maturity model

The OECD Forum on Tax Administration (FTA) has developed a set of stand-alone maturity models covering both functional areas of tax administration as well as specialised areas. Maturity models are a relatively common tool, often used on a self-assessment basis, to help organisations understand their current level of capability in a particular functional, strategic or organisational area. The recent *Enterprise Risk Management Maturity Model* (OECD, 2021<sup>[90]</sup>) covers the organisation and operational aspects of enterprise risk management.

The aim of this maturity model is to allow tax administrations to self-assess through internal discussions as to how they see their current level of maturity in enterprise risk management, to provide staff and senior leadership of the tax administration with a good overview of the level of maturity based on input from stakeholders across the organisation, and to allow tax administrations to compare where they sit compared to their peers.

The model sets out five levels of maturity achieved, in the process of being achieved, or aspired to be achieved by tax administrations:

- Emerging: the level achieved by tax administrations that have already developed to some extent but which, at least in the area of enterprise risk management, have significant further progress they could make.
- Progressing: the level achieved by tax administrations that have made or are undertaking reforms in enterprise risk management as part of progressing towards the average level of advanced tax administrations.
- Established: the level achieved by many advanced tax administrations, such as FTA members.
- Leading: the level achieved (or in the process of being achieved) by tax administrations that reflect the cutting edge of what is generally possible at the present time through actions by the tax administration.
- Aspirational: the level that might be achieved in the future as the use of new technology tools develops and as tax administrations move towards more seamless and real-time tax administration.

To assist in the understanding of what a given level of maturity means, a set of indicative attributes is also contained in the same maturity model table. The indicative attributes cover the following areas:

- Strategy
- Governance
- Culture
- Risk Identification
- Risk Analysis and Evaluation
- Risk Treatment
- Review and Revision
- Information, Communication, and Reporting

These indicative attributes are a selection of attributes that leading industry frameworks identify as important elements for implementing and sustaining enterprise risk management within any organisation.

Source: OECD (2021), *Enterprise Risk Management Maturity Model*, OECD Tax Administration Maturity Model Series (OECD, 2021<sup>[90]</sup>).

### **5.3.1. Design and implementation of the underlying systems**

Prior to the entry into force of the new VAT regime for non-resident suppliers, the main internal risks involve tax authorities' design and implementation of the online registration and compliance portal and supporting infrastructure.

In order to minimise internal risks during this phase, tax administrations should:

- Carefully study the principal features of the regime in order to design and implement a portal and supporting infrastructure fit for purpose.
- Adopt all the internal actions required to ensure a timely development and implementation of the portal and supporting infrastructure.
- Review and reflect on the business perspective, as future main users, during the development and implementation processes.
- Take proactive actions to avoid and, if required, timely correct any problem that may affect the normal operation of the systems.

### **5.3.2. Operation of the regime**

The proper operation of a simplified compliance regime for non-resident suppliers requires compliance by these suppliers with registering, filing, reporting and/or VAT payment obligations through the portal and other electronic means made available by tax administrations. The online registration and compliance portal for non-resident suppliers and its integration into tax authorities' existing IT, payment and account management systems are critical components of the infrastructure to support the operation of the simplified compliance regime.

It is important for tax administrations to ensure that the information provided by the registered businesses under the simplified compliance regime is safely stored and is used only for the purposes for which it was provided. Concerns about companies' data being disclosed to third parties can make such companies reluctant to share information with tax administrations. It may also create a reputational risk for tax administrations. Consequently, all information provided to tax administrations should, in principle, be considered confidential and access should be granted on a need-to-know basis within tax administrations.

This is particularly relevant in any circumstances in which tax administrations may have access to personal or sensitive information (e.g. information related to natural persons not carrying out economic activities, such as identification, personal consumption trends, etc.) due to data protection statutes in place in most jurisdictions. Limiting the required information to what is strictly necessary, as recommended by OECD guidance, helps reducing the amount of data and thus extenuates data protection concerns.

In addition, jurisdictions must ensure the security of taxpayer gateways and systems for processing payments.

This Toolkit recommends that jurisdictions meet the requirements, set out below, in order to safeguard the operation and security of their systems (including the data they collect for risk management purposes) and to ensure the security of payment gateways.

### *(i) Legal framework*

A legal framework is required in order to ensure the integrity of the systems and the appropriate use of the information accessed by tax administrations.<sup>127</sup>

Any officer or authority with knowledge of sensitive data, reports, or records generally should be required to maintain secrecy, except in the cases specifically provided by law, and sanctions should be prescribed for violation of the requirement, e.g., for improper disclosure or use of taxpayer information. The laws should be reinforced by adequate administrative resources and procedures to ensure their effective application.

A legal framework to combat cyber-attacks and sabotage should also be adopted.

### *(ii) Security management standards*

Tax administrations are advised to establish information security management systems to ensure the protection of relevant data in the context of the implementation of simplified compliance regimes for non-resident suppliers that are not located in the jurisdiction of taxation and for related audit purposes.

Tax administrations can ensure the effectiveness of such systems by applying internationally accepted standards, in particular 'ISO/IEC 27000-series'<sup>128</sup>, or ensuring an equivalent information security framework. Specifically, tax administrations are encouraged to:

- Maintain procedures for screenings and background investigations for employees and contractors who may have access to the tax administration's IT systems or data. Hiring processes and contracts should ensure that any user who will access confidential information and the employer:
  - Is aware of the confidentiality of data and the duty to observe secrecy.
  - Knows the consequences of improper use of information.
  - Is personally bound by a contract or, when the obligation to keep the confidentiality is established in tax law as a general commitment of the tax authorities and of every single tax officer, a personal declaration of awareness of this obligation.
- Provide initial and periodic training for employees and contractors regarding the use of confidential information and maintain pertinent updates to guidance that are readily available.
- Maintain procedures for terminating access to IT systems for departing employees and consultants.
- Maintain procedures that limit access to premises where tax information, paper or electronic, is stored to employees, consultants, and visitors who have a demonstrated need for such access.
- Maintain policies and procedures for receiving, processing, archiving, retrieving and disposing of hard copies of data belonging to taxpayers. These procedures should also establish how employees and contractors must dispose of physical documents when leaving their workspace at the end of the day.
- Maintain procedures to develop, document, update, and implement security for information systems used to receive, process, archive, and retrieve information. The procedures should include a periodic Information Security Plan, updates to the plan to address changes to the information systems

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<sup>127</sup> In 2013, the OECD issued Revised Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (available at <https://www.oecd.org/digital/ieconomy/privacy-guidelines.htm>). These Guidelines center on the practical implementation of privacy protection through an approach grounded in risk management, and the need to address the global dimension of privacy through improved interoperability. This revised version modernises the OECD approach to cross-border data flows, detail the key elements of what it means to be an accountable organisation, and strengthen privacy enforcement.

<sup>128</sup> Series of standards on information security management developed by the International Organisation for Standardisation (ISO) and International Electrotechnical Commission (IEC).

environment, and guidance for identifying and resolving problems and risks during the implementation of Information Security Plans.

- Take into account the following elements of their Information Security Plans, when such plans implement an Information Security Policy for all of their information systems: information security governance; establishment of information security procedures, roles and responsibilities; and information security technological and physical infrastructure. Information Security Plans should establish procedures for risk analysis and the selection and implementation of measures to deal with risks.
- Maintain policies to regulate system configuration and updates to the systems for registration and compliance.
- Maintain policies to limit system access to authorised users and to safeguard data. Taxpayers' information must be stored in systems where active and passive security is granted. Active security implies that each user must access only information relevant to the user's work. Passive security implies that every access is recorded and audited so that any violation can be identified and penalties are imposed.
- Ensure that the information systems identify and authenticate users prior to granting access to any confidential data in order to implement active security and that an authorisation system is in place to ensure that only properly authorised users can access the information.
- Except for very small tax administrations, where functions may be performed by a very small group of users, procedures should be in place that make it possible to grant authorisations for different groups of users to different categories of the information, e.g. for information relating to different types of taxpayers or payment information relating to different types of supplies. Access to data with respect to simplified VAT compliance regimes and related payments could then be independently from other data, typically on a need-to-know basis.
- Establish responsibilities and procedures for data access requests and authorizations in the tax administrations' security policy. Procedures should ensure that any user must be able to give reasonable justification for its data access requests, at least in reply to internal audit demands.
- Adopt systems and procedures for the identification and authentication of users and devices that require access to information systems. Larger organisations should use Identity and Authorisation Management systems to organise and control identity management.
- In order to implement passive security, ensure that all actions within the tax administrations' information systems are traceable for a certain period after the action. Tax administrations should be able to search and identify the user who performed any action in the systems. Policies and procedures should be in place to ensure that internal audits based on risk analysis are performed in order to monitor, analyse, investigate and report unlawful or unauthorised use. Larger tax administrations should base this analysis on information analysis systems. When a suspicious action is identified, procedures should establish who will deal with the risk and how they will pursue their objective. For example, such an act might include tax officers seeking access to taxpayers' sensitive compliance records, including sensitive commercial information, when they are not directly involved in the relationship management of, or audit programme for, those taxpayers. In such cases, tax administrations should have an information security organisational structure under which every user has a supervisor, typically one of their work managers. Supervisors will be informed of risky accesses and investigate the appropriateness of the performed action, reporting it to superior information security managers in the case of unlawful or unauthorised use. Larger organisations should base these procedures on information systems.
- Maintain policies for periodic and timely maintenance of systems, as well as the resolution of system flaws.

- Maintain procedures to monitor, control, and protect communications to and from information systems. These policies must define what channels and encryption technologies may be used.
- Maintain procedures to identify, report, and correct information system flaws in a timely manner. The security policy should establish roles and responsibilities in system flaw correction and software updates. Procedures should exist for testing and deploying upgrades and for periodically checking the systems for vulnerabilities. Procedures and responsibilities should be defined to periodically test and reinforce the security of the infrastructure in order to guard it against organised hacking or cyber-attacks.
- Store information in systems connected to a controlled network. Procedures should be in place to ensure that only authorised devices are connected to the network. Malicious code protection mechanisms should be implemented in any device connected to the network, and real-time and periodic controls, reports, and alerts should be performed for malicious code detection. Workstations of non-privileged users should be prevented from circumventing malicious code protection capabilities. Loading and unloading of data and files, for example through email, web access or USB ports, should be controlled and protected from malicious code intrusions.
- Maintain procedures to monitor system security alerts. Larger organisations should consider implementing information systems for incident management.
- Maintain policies that ensure the revision and updating of security measures and procedures. The revision process should be based on risk analysis.
- Maintain contingency plans and procedures to reduce the impact of improper data disclosure or irrecoverable loss of data. Larger organisations should also have business continuity plans to ensure continuity of operations in case of failure.
- Conduct risk assessments to identify risks and the potential impact of unauthorised access, use, and disclosure of information, or destruction of information systems. The security policy must assign responsibilities in performing and updating risk assessments and in taking measures to mitigate the identified risks.
- Maintain procedures to ensure that tax administrations are applying controls in accordance with computer security requirements, in the case of those that use third-party providers for the process, storage or transmission of confidential information.
- Maintain policies and processes to store confidential information and clearly label its origin and nature so that, in accordance with security access systems, it is disclosed only to pertinent users.

#### 5.4. Governance framework for establishing audit and risk management strategies

Audit and risk strategies are designed to ensure identification and further actions over non-compliant taxpayers. The governance framework for external audit and risk management is therefore business oriented, while the governance framework for internal audit is mostly security oriented.

The objective of the governance framework for external audit is to ensure that legal, organisational and personal resources and infrastructures are in place in order to facilitate risk management and audit. Tax administrations should take measures to ensure that these elements are adequate for the risk management and audit challenges they confront.

### **5.4.1. Developing a risk analysis organisation**

Dealing with non-compliance requires identification and prioritisation of risk cases and selection and pursuit of corrective measures. When deploying an international VAT strategy, tax administrations are encouraged to consider whether their present organisations are adequate for risk analysis and control, and specifically:

- Whether there is a clear allocation of responsibility for risk analysis, be it an individual (a high-level tax official) or a committee when different risk areas are the responsibility of different parts of the organisation. For example, tax collection and tax control may have different senior risk managers who should coordinate their decisions as well as their efforts and insights, preferably through the use of common infrastructures.
- Whether the responsible person(s) has(ve) authority to control risk analysis throughout the organisation.
- Whether the risk analysis organisation has convenient access to all relevant data and is able to perform sufficient data analysis or is sufficiently coordinated with the data analysis organisation.
- Whether the organisational structure is adequate. Options may range from full consolidation of non-resident suppliers into one directorate (which is fully responsible for those businesses and their interactions with the tax administration) to no consolidation, with non-resident suppliers not being specifically recognised within the tax administration's organisational structure (and thus subject to the regular organisational set-up, e.g. by tax type or function).
- In large organisations, there may be specialised teams with a deeper knowledge of particular situations, typically local teams under the supervision of a central entity. For taxpayers based in other jurisdictions, tax administrations may need to organise teams around taxpayers with similar characteristics (e.g., by supplies (goods or service providers), by size, or by location regions).
- Whether all tax officials who are in a position to identify risks can propose cases to the risk organisation, and there is sufficient knowledge management so that all relevant tax officials are appropriately informed whenever a new way of identifying risk is found. The same approach should be taken to the phase-out or correction of past-identified risks.
- In order to prevent specific targeting of taxpayers by tax officials operating unethically or with bias, a two-phase selection process for auditing may be implemented. For example, a central team would propose a set of cases to be audited and a specific team would select the most relevant selection of cases for action.
- In order to prevent protection for taxpayers by officials operating unethically or with favouritism, periodic audits should review and reconsider the reasons why risky cases were selected or discarded for audit.

### **5.4.2. Assembling a suitable team of specialists to perform risk analysis**

The process of risk analysis involves identifying all relevant data sources, analysing data, and deciding what actions must be taken. Risk analysis teams should have:

- Knowledge of businesses and applicable legislation.
- Knowledge of the data available at the tax administration, data analysis capabilities, and use of the available data analysis infrastructures.
- Experience in analysis of non-compliance.

While tax administrations can assemble teams with different experts to ensure that all requirements are met, mixed skills are preferable as they will improve teams' coordination.

### 5.4.3. How risk analysis infrastructures can facilitate governance

While assigning responsibilities and roles for risk analysis is essential for tax administrations, the use of specific IT-infrastructures will simplify and enhance the efficiency of risk analysis and auditing, especially in larger organisations. Tax administrations should consider deploying the following infrastructures:

- **Data analytics infrastructures.** The basis of risk analysis is data analysis, so data analytics infrastructures are crucial for effective risk analysis. Data analytics platforms are horizontal infrastructures that tax administrations use in order to base their decisions on robust assessments of data. Although the use of data analytics platforms exceeds the scope of risk analysis for international VAT collection alone, tax administrations that do not have a data analytics platform should consider the implementation of such infrastructure for risk analysis.
  - Tax administrations that already use one or more data analytics platforms are encouraged to reuse existing infrastructures.
  - Data analytics platforms should be designed to ensure data governance specifically in the dimensions of completeness, security, quality, semantic clarity, and integration. In larger organisations, the provision of self-service data analysis by the platform to all relevant users and not only to specialists is desirable.
- **Risk repository.** Tax administrations will need to implement a risk repository so that all types of identified risks and circumstances associated with non-compliance are well documented, maintained, and available to all relevant stakeholders. Additionally, larger organisations should consider putting in place systems to centralise and manage proposals for the management of existing or new risks. Such systems will implement the procedures by which new risks, as well as the modification or phase-out of existing risks, are proposed by any competent auditor, and by which proposals are analysed and adopted or rejected by a governing team.
- **Risk management systems.** Tax administrations may consider the implementation of dedicated risk management systems. While risk repositories document the different conditions that tax administrations have identified as potential indicators of non-compliance, risk management systems store and manage all occurrences of those potential indicators of non-compliance.
  - Each occurrence should be assigned to a taxpayer or a file and be evaluated in terms of probability of occurrence and monetary impact. In cases where a probability or monetary impact may not be calculated, some numerical value should be assigned in order to facilitate risk prioritisation. For example, unregistered non-resident businesses offering short-term rentals on digital platforms represent a risk of non-registration.
  - The conditions under which a tax administration decides an activity or behaviour is a risk (i.e. number of offered rooms, or portals where they are being offered, etc.) would be stored in the risk repository, while the actual information about the identity of riskier foreign companies would be managed in the risk management system.
  - An important functionality of risk management systems is the ability to combine different risk types that can concurrently bear upon certain individuals or cases, and prioritise risks based on probability and impact (or on any other criteria relevant to the organisation) in order to select cases for action. When these systems are connected to the data analysis systems, or are based in those systems, automatic processes can be deployed in order to periodically evaluate risks so that risks are permanently updated. The risk management system will keep track of all identified risks for further feedback, and for audit of the actions that have been taken for identified riskier situations or individuals.

## 5.5. The potential role of programmes of co-operative compliance

### 5.5.1. What is a co-operative compliance programme?

A co-operative tax compliance programme aims to voluntarily build a relationship of mutual trust between taxpayers and the tax authorities to facilitate tax compliance while at the same time protecting tax revenues.

The OECD Forum on Tax Administration's *Study into the Role of Tax Intermediaries* (OECD, 2008<sup>[91]</sup>) identified seven pillars as central to the establishment of a more co-operative relationship between taxpayers and revenue bodies. These are (OECD, 2013<sup>[92]</sup>):

- In dealings with taxpayers, revenue bodies demonstrating understanding based on commercial awareness, impartiality, proportionality, openness through disclosure and transparency, and responsiveness; and
- In dealings with revenue bodies, taxpayers providing disclosure and transparency.

As a result of this mutual trust, both parties may benefit greatly. On one hand, the taxpayer provides complete disclosures that include relevant information and tax risks and is transparent to the revenue body. Taxpayer transparency will ease the tax authorities' task of risk analysis and allow them to allocate resources (e.g. tax audits) to taxpayers or economic activities whose tax risks are higher. On the other hand, taxpayers' commitment to disclosure and information transparency may significantly reduce the extent to which the tax authorities review taxpayers' obligations or seek to audit the returns they submit, thereby markedly increasing taxpayers' legal certainty.

Such good practice was developed in jurisdictions where a strong trust relationship already exists between the tax administrations and most large local taxpayers.

Practical commitments from businesses in terms of transparency can include the following:

- To provide information in an accurate and timely manner when requested by the tax authorities, either upon specific request/tax control procedure or to comply with existing reporting obligations. This disclosure commitment must be balanced against the legal limitations on providing personal information to third parties and to the tax authorities, such as laws on data protection.
- To establish an internal tax control framework (TCF) to prevent, detect and deter tax risks at their earliest stage. The implementation and the practical application of the TCF may be monitored by the tax authorities (OECD, 2016<sup>[93]</sup>).<sup>129</sup>
- To use appropriate communication channels with the tax authorities to raise relevant tax issues before submitting the tax return or fulfilling other tax obligations.
- To raise tax authorities' awareness of distortions of competition detected in the market due to non-compliance.

Tax authorities in such a co-operative framework must, in return, also offer the appropriate transparency in the application and interpretation of the law and in their decision-making criteria. Tax authorities should also commit themselves to offering general taxpayer guidance. For this purpose, tax authorities' measures to increase transparency can include the following:

- Provide permanent and easy-to-access assistance to the taxpayer in addressing whatever doubts or concerns it may have when interpreting the law. Providing information and assistance in English and in the language(s) of the jurisdiction's main trading partners in addition to the national language(s) is

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<sup>129</sup> In Chapters 2, 3 and 4, the value of developing internal Tax Control Frameworks is highlighted especially when this internal system is monitored by the tax authorities.

particularly important in achieving high levels of compliance from non-resident businesses. It is important to note in this context that English will often have been the default language for the development of the underlying technology for accounting and tax compliance systems, even in non-English speaking jurisdictions. Making relevant information available in English can thus contribute considerably to facilitating ease of compliance.

- Provide tax rules in downloadable electronic format.
- Provide early and complete information of legislative changes and of any relevant case law or administrative guidance, especially when the criteria on which authorities and judges base decisions differ from previous criteria.
- Create and maintain an easily accessible and up-to-date channel for questions and answers.
- Maintain easily accessible and responsive communication channels such as email address, telephone contact points, etc.
- Involve the relevant stakeholders in the law-making process, so that they may offer their opinions and suggestions before the law is approved. This commitment can take the shape of public consultations, studies of impact and the like. One crucial request from the business community is that major legislative changes be announced in advance, so that businesses have sufficient time to adapt their IT systems, invoicing, record-keeping, etc. to the new rules. In this regard, governments may consider adoption of transitional measures when simplified compliance regime enters into force to facilitate non-resident suppliers' transitioning to new VAT obligations.
- Establish permanent fora where businesses and tax authorities can regularly meet to share their experiences, concerns and proposals to improve the management of the tax system.

To prevent subsequent misunderstandings, this exercise in mutual transparency is ideally put into practice before the submission of VAT returns, so that taxpayers can make decisions with full information in their hands. The aim of this early dialogue and exercise of transparency is that there should be no surprises regarding tax obligations, either for the tax authorities or for the taxpayers.

### **5.5.2. Recent experiences in co-operative compliance**

Chapter 2 of the OECD report *Co-operative compliance: a framework. From enhanced relationship to co-operative compliance* identifies more than 20 jurisdictions<sup>130</sup> worldwide that at the time the report was published had some kind of co-operative compliance programme in tax matters, either formal (in the shape of explicit regulations) or informal (in the shape of regular actions) included in the above mentioned seven pillars for co-operative compliance (see subsection 5.5.1) (OECD, 2013<sub>[92]</sub>).

The co-operative compliance programmes worldwide are not alike. Each jurisdiction implements such programmes according to its particular framework in terms of the size of taxpayer businesses, the most relevant economic activities in the country, the predominant tax in terms of revenues, the capacity of the tax authorities to fulfil their commitments, the voluntary or mandatory disclosure rules, and whether entry into the programme is based upon application or invitation, etc. (OECD, 2013<sub>[92]</sub>). Regarding co-operative compliance programmes one size does not fit all.

Co-operative compliance programmes worldwide include mostly large companies, as these companies have the resources needed to create an internal TCF and to maintain contacts with the tax authorities on a regular basis.

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<sup>130</sup> The Table 2.1 in Chapter 2 of the report mentions Australia, Austria, Canada, Denmark, Finland, France, Germany, Hong Kong, Hungary, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Russian Federation, Singapore, Slovenia, South Africa, Spain, Sweden, United Kingdom and United States.

Generally speaking, the co-operative compliance programmes initially have largely focused on direct taxation of large multinational companies (transfer pricing, profit allocation for corporate tax purposes, fixed establishment, etc.). Against the background of the growing international dimension of VAT-compliance, particularly in the context of cross-border digital trade growth, there is growing attention for the potential of co-operative compliance approaches to support international VAT compliance.

A co-operative approach to VAT policy design has notably been embraced by the OECD<sup>131</sup> and the European Union<sup>132</sup> that have created working groups and fora, along with frequent conferences and events, to facilitate consultation between business community representatives and the participating jurisdictions.

## 5.6. Enforcement and related measures to address non-compliance

### Guide to subsection 5.6.

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<sup>131</sup> At the OECD, Working Party No. 9 (WP9) brings together tax officials from member jurisdictions for policy debate and development of standards in the area of VAT/GST. WP9 hosts regular meetings where tax authorities of the member jurisdictions, business community, academia and the OECD Secretariat meet to discuss relevant topics. Furthermore, the OECD Global Forum on VAT meets every 18 months gathering OECD member countries and non-OECD economies, with global experts also attending from business, academia and beyond. For more info, see notably: <https://www.oecd.org/ctp/consumption/vat-global-forum.htm>.

<sup>132</sup> In the European Union, the VAT forum offers a regular discussion platform where businesses and VAT authorities meet to discuss how the implementation of the VAT legislation can be improved in practice. Notable meeting agenda items and working papers have been devoted to co-operative compliance approaches, such as a cross-border rulings project, double taxation dialogue, guide on administrative co-operation between Member States and businesses, etc. For more info, see: [https://ec.europa.eu/taxation\\_customs/business/vat/eu-vat-forum\\_en](https://ec.europa.eu/taxation_customs/business/vat/eu-vat-forum_en)

Furthermore, under the FISCALIS budget program, regular conferences and workshops are devoted to VAT. For example, ahead of the implementation of the VAT e-commerce legislative package due to enter into force in mid-2021, two workshops were held gathering over 100 representatives of tax authorities, business and academia, to discuss a wide variety of concerns, interpretations, practical difficulties, etc., regarding the implementation of the future VAT legislation. As a result of this permanent dialogue, a set of practical Explanatory notes was published by the EU Commission. For additional information, see: European Commission (2020), *Explanatory notes on VAT e-commerce rules* at [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/vatecommerceexplanatory\\_notes\\_30092020.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/vatecommerceexplanatory_notes_30092020.pdf).

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As a starting point, tax administrations should facilitate and enhance compliance by non-resident suppliers under a simplified compliance regime by ensuring that the law and supporting guidance are clear on precisely what is expected from these suppliers under a simplified compliance regime (main obligations) and what they can expect from the tax authorities. This information should be communicated effectively to the non-resident suppliers and other stakeholders such as digital platforms that are likely to have VAT obligations under such a regime. Table 5.2 provides an example of an effective strategy to enhance compliance, with appropriate enforcement measures where considered necessary, as adopted by the Australian Taxation Office.

### Table 5.2. Country examples

The Australian Taxation Office provided, in the context of its reform to the application of VAT (GST) to sales of low-value goods as of 1 July 2018, the following table summarising its general approach:

| Compliance category  | Your behaviour   | Our action   |
|--|--|--|
| <b>Fully compliant – Willing to do the right thing</b>           | You have: <ul style="list-style-type: none"> <li>Registered for GST as required.</li> <li>Made necessary changes to your business systems.</li> <li>Collected GST as required.</li> <li>Reported and paid GST collected by the due date.</li> <li>Made an honest mistake.</li> </ul> | We will not contact you unless we believe that you have made a mistake. From 1 July 2018 to 30 June 2019, where you have made a mistake, we will: <ul style="list-style-type: none"> <li>Ask you to correct it.</li> <li>Not impose any penalties.</li> </ul> From 1 July 2019, where you have made a mistake, we will: <ul style="list-style-type: none"> <li>Ask you to correct it.</li> <li>Consider your circumstances and level of co-operation before applying penalties.</li> </ul> |
| <b>Mostly compliant – Try to comply but don't always succeed</b> | You have: <ul style="list-style-type: none"> <li>Registered for GST as required.</li> <li>Made a genuine attempt to collect, pay and report GST as required, but have difficulty with any or all of these.</li> <li>Contacted us about your situation and worked with</li> </ul>     | We will not contact you unless we believe you have made a mistake. From 1 July 2018 to 30 June 2019, where you have made a mistake, we will: <ul style="list-style-type: none"> <li>Ask you to correct it.</li> <li>Not impose any penalties.</li> </ul> From 1 July 2019, where you have made a mistake, we will: <ul style="list-style-type: none"> <li>Ask you to correct it.</li> </ul>  |

| Compliance category                               | Your behaviour   | Our action  |
|---|--|---|
|   | us to resolve it.  | <ul style="list-style-type: none"> <li>Consider your circumstances and level of co-operation before applying penalties.</li> </ul>  |
| <b>Partly compliant – Don't want to comply</b>    | You have: <ul style="list-style-type: none"> <li>Registered for GST as required.</li> <li>Not collected GST as required.</li> <li>Not reported the GST you collected.</li> <li>Not paid us the GST collected.</li> </ul> | As of 1 July 2018 we will: <ul style="list-style-type: none"> <li>Calculate your liability and issue an assessment.</li> <li>Impose an additional 75% administrative penalty.</li> <li>Take recovery action for the debt.</li> </ul>  |
| <b>Not compliant – Have decided not to comply</b> | You have taken no action to comply with your obligations.  | As of 1 July 2018 we will: <ul style="list-style-type: none"> <li>Register you for GST.</li> <li>Calculate your liability and issue an assessment.</li> <li>Impose an additional 75% administrative penalty – higher penalties can apply if you are a significant global entity.</li> <li>Take recovery action for the debt.</li> </ul> |

Source: Australian Taxation Office (see further at <https://www.ato.gov.au/Business/International-tax-for-business/GST-on-low-value-imported-goods/Making-compliance-happen/#Consequencesfornoncompliance>).

Despite the efforts of tax authorities to facilitate compliance by non-resident suppliers, non-compliant conduct can nevertheless occur. To discourage such non-compliance by non-resident suppliers, appropriate enforcement measures should be adopted and implemented.

When no specific penalty provisions exist in current legislation or when the existing provisions are not clear, jurisdictions are advised to adopt legal provisions explicitly providing that penalties may be imposed on non-resident suppliers for infringements of domestic obligations, when they fall within the scope of the obligations.

Jurisdictions are advised to consider concessional treatment during the commencement period of the law's application.

### 5.6.1. Interests

The primary objective of regimes requiring the payment of interest on delinquent tax payments is to assure that governments will ultimately receive the present value of taxes that are legally due by compensating them for the deprivation of the use of tax revenues that are not paid on time (Waerzeggers Christophe, Hillier Cory and Aw Irving, 2019<sup>[94]</sup>). Taxes paid after the due date have a negative net financial impact on tax revenues. As the public treasury expects to obtain revenues at the proper time and use them for public investment and expenditure, late payment must be discouraged and the financial consequences compensated, as in the case of any creditor whose scheduled loan repayments are belatedly settled. In addition, requiring compensation from taxpayers that pay their taxes late avoids distortion of competition with compliant taxpayers.

The legal responses for late tax payments vary notably across jurisdictions. In some jurisdictions, an above-market interest rate is applied to the late payments. In other jurisdictions, specific fixed surcharges based on a percentage of the overdue amounts are applicable. The surcharge percentage may vary depending on how long the payment has been overdue. A mixed system including interest rates and surcharges is also applicable in certain jurisdictions. In some jurisdictions, specific interest rates or surcharges apply only when taxpayer makes the late payment on its own initiative, whereas a harsher penalty system is applied to tax shortfalls discovered by the tax authorities. In other jurisdictions, when the tax authority identifies the unpaid tax, a combination of increased interest rates and penalties may be applied. Many jurisdictions in the LAC region have also introduced mechanisms for adjusting overdue taxes according to inflation.

To avoid discrimination and unfair distortion of competition in favour of non-established taxpayers, the domestic legal framework for discouraging late tax payments should apply equally to all taxpayers in the same manner regardless of whether they are established in the taxing jurisdiction. Prescribing clear rules in general tax law and ensuring public awareness of the consequences of late payments are recommended regardless of the taxpayer's place of establishment.

### **5.6.2. Administrative penalties**

An administrative penalty is a non-criminal remedy for a party's violation of laws or regulations. Penalties are often intended to achieve greater compliance by deterring certain undesirable behaviours (Waerzeggers Christophe, Hillier Cory and Aw Irving, 2019<sup>[94]</sup>). This subsection focuses on monetary sanctions or fines.

These sanctions are most appropriate for addressing non-compliant behaviours that are easily detectable and in situations where they can be consistently enforced (Waerzeggers Christophe, Hillier Cory and Aw Irving, 2019<sup>[94]</sup>). This could be the case for domestic customers deliberately misrepresenting themselves as businesses in order to avoid VAT charges.

The imposition of administrative penalties in non-compliance cases that are of a less egregious nature enables such cases to be taken out of the criminal justice system, thus easing the burden on the criminal courts and ensuring faster and more efficient resolution of such cases. Also, administrative offences typically require a lower standard of proof than criminal offences and therefore can have a greater deterrent effect as non-compliant behaviours are penalized more consistently and predictably (Waerzeggers Christophe, Hillier Cory and Aw Irving, 2019<sup>[94]</sup>).

In principle, administrative penalties applicable to non-resident suppliers under a simplified compliance regime should follow the same fundamental principles that are applicable to domestic taxpayers.

### **5.6.3. Criminal prosecution**

In response to, or to prevent, serious infractions, jurisdictions may consider taking proportionate measures including the application of criminal sanctions.

Most taxpayers comply with their obligations. However, some of them may persevere in being non-compliant and use any means to evade their tax obligations. It is in respect of those taxpayers, for whom support and monitoring does not improve compliance, that criminal law may play an important role (OECD, 2017<sup>[95]</sup>).

Tax evasion is usually considered a criminal offence across jurisdictions. However, the specific domestic criminal law provisions vary notably worldwide, as the defined actions and criminal sanctions will not be the same in all jurisdictions (OECD, 2017<sup>[95]</sup>).

There is no common OECD definition of the term evasion. However, this concept is covered in the *OECD's Glossary of Tax Terms*<sup>1</sup>, as follow:

- Evasion: A term that is difficult to define but which is generally used to mean illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from tax authorities.

The foregoing definition is used for illustrative purposes only. It might not reflect the specific definitions that may exist in a national context or beyond the application of rules based on an interpretation of the Guidelines or this work.

1. OECD Glossary of Tax Terms are available at <https://www.oecd.org/ctp/glossaryoftaxterms.htm>

Evasion could include the falsification or suppression of evidence or making false statements that result in VAT not being remitted to governments or that lead to inappropriate refunds being obtained from governments.<sup>133</sup>

In the context of a simplified compliance regime, evasion could include the following behaviours:

- Non-resident suppliers charging VAT to final consumers and deliberately failing to remit such tax to the tax authorities as required.
- Non-resident suppliers fraudulently making input VAT refund claims, if applicable, e.g. under a separate refund procedure for non-resident suppliers or through the regular (domestic) procedure.

Jurisdictions should assert their powers to prosecute serious VAT offences committed under a simplified compliance regime. International co-operation is likely to be necessary for the practical application of these measures. This includes the usage of a number of tools, such as information sharing and evidence collection, witness questioning, execution of seizure orders, and even joint investigation.

An appropriate legal basis is recommended for such mutual co-operation between jurisdictions. This may be included in exchange of information agreements, mutual assistance packages, and bilateral or multilateral tax conventions and agreements.<sup>134</sup> Annex I.2 provides an overview of the main legal instruments for international co-operation in criminal matters. In the absence of a specific convention, jurisdictions may apply the principle of reciprocity in evaluating their willingness to co-operate in practice.

It is important to note that some international requests for co-operation in connection with tax crimes have faced legal challenges based on the invocation by the requested party (or by the taxpayer under investigation once aware of the request) of the principle of double incrimination. According to this principle, the requested jurisdiction could co-operate only insofar as the same conduct is considered a tax crime under its domestic criminal laws.

<sup>133</sup> The Guidelines, para 4.27 page 109.

<sup>134</sup> See principle 9 of OECD (2017), *Fighting Tax Crimes*, at <https://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.pdf>, which mentions the following co-operation agreements: information sharing agreements (such as TIEAs), agreements for exchange of information and administrative assistance, bilateral tax treaties and other instruments (such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters), as well as agreements for co-operation in using investigative and coercive powers (such as MLATs).

#### **5.6.4. Payment intermediaries as a backstop to deal with non-compliant suppliers**

Financial intermediaries or payment service providers (PSPs) and similar entities that participate in processing payments for digital transactions could potentially contribute to the collection of and accounting for VAT on behalf of non-resident suppliers. Potential roles for financial intermediaries are analysed below.

##### **(i) Collection role**

Payment intermediaries may play a role in the collection of VAT from non-resident suppliers by assuming the obligation to withhold VAT due (in whole or in part) on underlying transactions when transferring payments for sales to these suppliers and remitting the withheld tax to the taxing jurisdiction's treasury. In practice, withholding systems may often require the payment intermediary to charge the VAT due in addition to the price of the transaction, i.e. a mark-up on the sales price as distinct from a margin.

Financial intermediaries' potential collection role raises a number of practical difficulties, previously analysed in subsection 4A.1.4 and also in Annex B. Some of the principal concerns are:

- Lack of the information needed to make the appropriate taxing decision. This is even more challenging where multiple rates and/or exemptions may apply.
- Inability to differentiate transactions involving B2B supplies (on which VAT may be applied through a reverse charge by the business customer) from those involving B2C supplies.
- Inability of intermediaries to identify services and intangibles in-scope versus services and intangibles out-of-scope, e.g. when goods and digital supplies are included in the same invoice/credit card transaction.
- The considerable implementation and operational costs incurred by the payment intermediaries, costs that may be passed on to buyers, sellers or the tax authorities.
- Potential difficulties with refund applications when VAT has been applied incorrectly or when items sold are returned. Consumers may turn in the first instance to vendors who typically have never received the VAT for which consumers request a refund. High volumes of low-value refund requests may also create unreasonable workloads for tax authorities.
- The non-resident supplier's lack of knowledge that a financial intermediary has imposed a VAT charge on the consumer, thus leading to double taxation when the supplier also charges tax.

VAT withholding regimes raise major challenges if they serve as a jurisdiction's principal collection mechanism. They create undue challenges for non-established taxpayers that are willing to comply and whose economic activities are carried out in many jurisdictions and subject to widely differing rules.

It is complex and burdensome for payment intermediaries to apply the withholding system in practice and for tax authorities to properly assess tax risk and monitor compliance. Due to this complexity, payment service providers may frequently make unintentional mistakes when withholding tax. The system can therefore produce both tax shortfalls and undue VAT charges, which tax authorities are required to address.

Furthermore, due to the continuing evolution of electronic payment methods, the withholding system may be easily circumvented through use of alternative payment services provided by non-established intermediaries. The possibility of circumventing VAT law and obtaining lower prices may create an incentive to shift payment services from the domestic to foreign markets.

Burdening financial institutions with the task of classifying supplies by type would require industry-specific data and expert knowledge of the VAT system applicable to the supply. Financial institutions would find it difficult to classify the type of supply based purely on the product description submitted by the supplier. In many cases, the national financial infrastructure and information systems through which consumers make payments to suppliers will not contain a data field for product descriptions at all.

As a consequence, the OECD guidance does not recommend the application of a financial intermediary withholding regime as a jurisdiction's primary approach to collecting VAT for non-resident suppliers. Nevertheless, if treatment strategies undertaken by the tax administration are unsuccessful in engaging non-resident suppliers in the VAT collection process, it may be reasonable for tax authorities to seek to enforce tax collection by requiring financial intermediaries to withhold and account for the VAT on sales by non-compliant suppliers. A targeted use (i.e. directed only at an identified list of pervasively non-compliant suppliers) of this measure is likely to limit the practical difficulties identified above.

Jurisdictions analysing whether to introduce this type of collection mechanism should consider:

- Prioritising the simplified compliance regime for non-resident supplier-based collection as the basis of their regime applicable to VAT on international B2C supplies.
- Using financial intermediary withholding mechanisms only as a backstop to deal with specific non-compliant suppliers, as determined by the tax administration in the course of their compliance monitoring duties.

### *(ii) Reporting role*

In addition to their potential role in the VAT collection process, financial intermediaries can play an important reporting role by providing information to the tax authorities regarding the financial flow of transactions. This information may be provided at the request of the tax authorities or as a result of periodic reporting obligations.

Enlisting payment intermediaries in the VAT information reporting process can present a number of challenges, including:

- There may be legal limitations on tax authorities' ability to access VAT-relevant financial information from payment intermediaries.
- Payment intermediaries may only have limited information about the VAT-relevant aspects of the underlying supplies for which payments are made. Payment intermediaries may only have limited information or no information at all, for example, on the identity of the payor and payee (i.e. whether they are effectively the customer and the supplier for VAT purposes), the VAT-nature of the underlying transaction, or the recipient's customer status for VAT purposes (business or private consumer).
- Any reporting obligation should encompass only information that is normally at the disposal of the payment intermediary in its normal course of business in accordance with its regulatory obligations.

Some jurisdictions, including in the LAC region, have introduced general and periodic information reporting obligations for payment intermediaries as an important source of information for tax purposes. See Table 5.3.

While these reporting obligations may constitute a valuable source of information for VAT purposes, tax authorities may wish to carefully consider the following approaches in designing such a reporting obligation:

- To respect the principle of proportionality in weighing the costs incurred by financial intermediaries to comply and the benefits expected by the tax authorities from the use of this information. An excess of information might be difficult for tax authorities to manage and create an unnecessary compliance burden for payment intermediaries.
- To require, in principle, only the reporting of information that is available to the payment intermediaries in the normal course of their business.

Tax authorities are strongly encouraged to make every possible effort to facilitate compliance with reporting obligations through fluid communication channels, publicly available responses to frequently asked questions, and detailed guidance.

Table 5.3. Role of payment service providers in selected LAC jurisdictions

| Jurisdiction | Rules in place for taxing inbound supplies | Collection role   | Information role  |
|--------------|--|---|---|
| Argentina    | Yes  | Yes. Main collection mechanism  | No  |
| Chile        | Yes  | Yes. Backstop measure to be applied on selected cases. Currently not implemented. | Yes. Banks are required to provide quarterly information to the tax administration regarding payments made by credit, debit cards or similar means to non-resident suppliers. |
| Costa Rica   | Yes  | Yes. Alternative collection mechanism for non-registered platforms.               | No  |
| Colombia     | Yes  | Yes. Alternative collection mechanism.  | No  |
| Ecuador      | Yes  | Yes. Alternative collection mechanism for non-registered platforms.               | No  |
| Mexico       | Yes  | No  | No  |
| Peru         | No   | No  | No  |

Source: OECD research.

### 5.6.5. Other measures

#### (i) Website blocking

A number of jurisdictions<sup>135</sup> have enacted provisions that allow tax administrations or other government bodies to block the access to non-resident suppliers' websites as a last resort in cases of non-compliance. This measure would essentially block consumers from having online access to digital services or platforms from a company that is found to be non-compliant with the domestic VAT regime.

On the technical side, there are different ways to block access, all of which present different challenges in their practical application.<sup>136</sup>

Jurisdictions contemplating the adoption of this measure should consider, amongst others, the following issues:

- Possibility of circumvention: The technique used for the application of this measure may be evaded by the non-compliant non-resident suppliers, by users in the taxing jurisdictions, or both. This may negatively impact the effectiveness of the measure.

<sup>135</sup> Examples include Mexico and Australia.

<sup>136</sup> See Internet Society (2017), *Internet Society Perspectives on Internet Content Blocking: An Overview* at <https://www.internetsociety.org/wp-content/uploads/2017/03/ContentBlockingOverview.pdf>. It describes a number of content blocking techniques oriented at illegal content.

- Potential collateral damage: Since websites are often housed within cloud services, blocking one could have ripple effects that block many others in the process, impacting the broader Internet ecosystem. Blocking the access to a particular service may have unintended consequences on businesses relying on the blocked service for their normal operation (e.g. payment service providers).
- Privacy concerns: Several types of content blocking require the examination of the user’s traffic, including encrypted traffic. User’s privacy may be affected during the process.<sup>137</sup>
- Potential breach of international trade agreements: the application of this measure only to non-resident suppliers, i.e. not upon domestic businesses, may be inconsistent with “national treatment” clauses.

### ***(ii) Public acknowledgement of registered businesses***

Some jurisdictions periodically publish the lists of registered non-resident suppliers on their tax administrations’ websites. This measure aims at creating awareness by final consumers and is usually complemented by schemes that allows interested parties to report the activities carried out by non-registered suppliers.

## **5.7. The role of international administrative co-operation in enhancing enforcement**

### **Guide to subsection 5.7.**

| <b>Section</b> | <b>Theme</b>  | <b>Page</b> |
|----------------|---|-------------|
| <b>5.7.1.</b>  | <b><i>Legal bases</i></b>   | <b>318</b>  |
| <b>5.7.2.</b>  | <b><i>General aspects of the main forms of co-operation</i></b>                                 | <b>319</b>  |
|                | <i>(i) Exchange of information (general requirements)</i>                                       | 319         |
|                | <i>(ii) Administrative co-operation with a view to enforcing VAT collection (debt recovery)</i> | 320         |
|                | <i>(iii) Joint audits</i>   | 321         |
| <b>5.7.3.</b>  | <b><i>Multilateral Convention on Mutual Administrative Assistance in Tax Matters</i></b>        | <b>322</b>  |

The International VAT/GST Guidelines recommend that jurisdictions take appropriate steps towards making greater use of existing OECD instruments and other legal instruments for international administrative co-operation to support the effective collection of VAT/GST in a cross-border context

<sup>137</sup> *ibid.*

### 5.7.1. Legal bases

The use of international administrative co-operation tools in tax matters requires the existence of a legal basis between the requesting and the requested jurisdiction. International agreements may provide the legal basis for tax administrations to obtain VAT-relevant data, e.g. in respect of non-resident suppliers and/or digital platforms under a simplified compliance regime.

The following instruments may provide a legal basis for administrative co-operation in VAT. These instruments are not mutually exclusive.

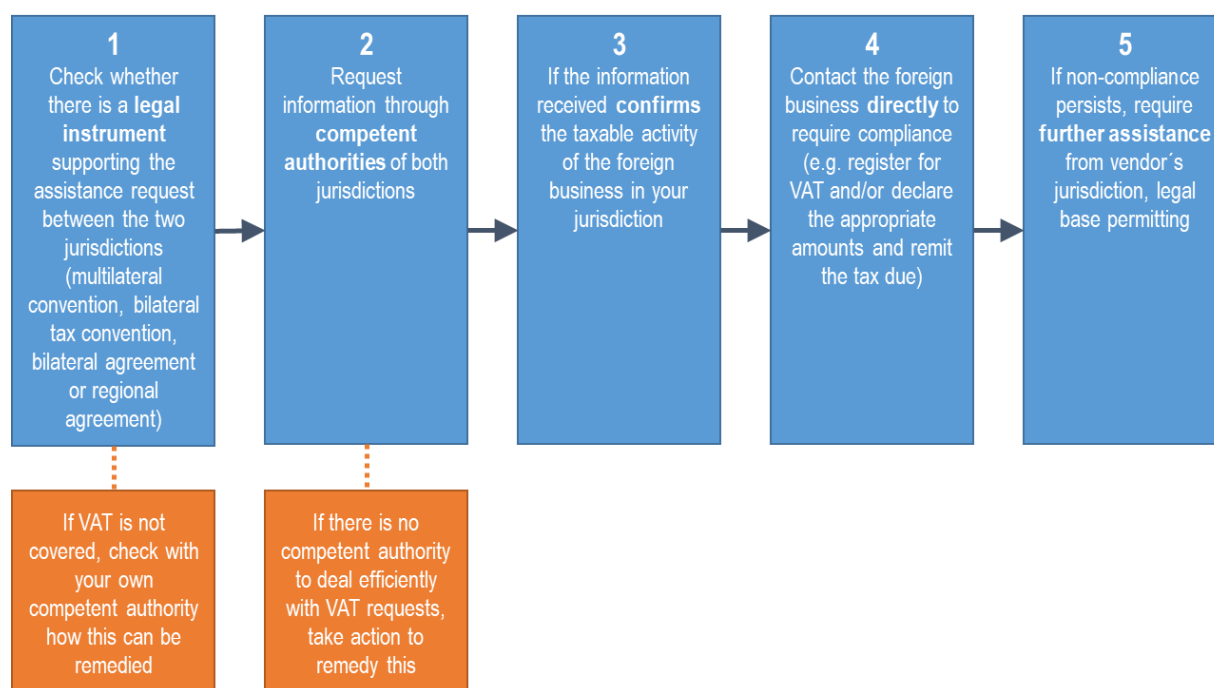
- **Multilateral conventions**, in particular the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD/Council of Europe, 2011<sup>[89]</sup>) (“MAAC”; See subsection 5.7.3). The MAAC is the most comprehensive multilateral instrument available for all forms of tax co-operation to address tax evasion and avoidance. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.
- **Bilateral tax conventions**. Most bilateral double tax treaties that provide legal basis for the exchange of information and mutual assistance in tax matters follow the OECD Model Tax Convention (or the UN Model Tax Convention, similar to the OECD Model) (OECD, 2017<sup>[96]</sup>). Article 26 of the OECD Model Tax Convention provides for exchange of information. Article 27 of the Model provides for assistance in the collection of taxes. Although the “taxes covered” by the Model generally are limited to “taxes on income and on capital” (Article 2), Article 26 and Article 27 both provide that their scope “is not restricted by Articles 1 and 2.” Accordingly, obligations imposed by these Articles relating to exchange of information and assistance may apply to taxes other than those on income and capital, such as value added taxes. It must be noted, however, that this extension of the scope of Articles 26 and 27 to taxes not covered by the Convention was adopted only in 2000. Double tax treaties adopted before 2000 and not revised since then do not normally allow for the exchange of information and assistance in tax collection for VAT. Today, many double taxation treaties can provide a basis for requesting information and other types of administrative co-operation in VAT. However, prior to initiating an exchange of information for VAT, the content of the bilateral tax convention must be analysed to check VAT/consumption taxes are not excluded from clauses on administrative co-operation.
- **Regional frameworks**<sup>138</sup>
- **Tax information exchange agreements** (TIEAs). Annex I.1. provides detailed information about the OECD Model Agreement on Exchange of Information on Tax Matters and on the CIAT Model Agreement.

Each of these legal instruments designates the competent authorities in each country to receive and respond to requests for assistance in tax matters. In most cases, jurisdictions have not designated a specific competent authority for VAT-related requests. It is therefore important to make clear in the request that the request is intended for the authorities in charge of the VAT.

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<sup>138</sup> An example of a high level of administrative co-operation in a Regional Area for tax recovery is the EU framework. The legal base is provided in the Council Directive (EU) 2010/24 of 16 March 2010 and Council Regulation (EU) 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax at [EUR-Lex - 32010L0024 - EN - EUR-Lex \(europa.eu\)](#) and [EUR-Lex - 02010R0904-20200101 - EN - EUR-Lex \(europa.eu\)](#) respectively.

Figure 5.1. Basic process to request assistance from foreign tax authorities



Source: OECD analysis.

## 5.7.2. General aspects of the main forms of co-operation

### (i) Exchange of information (general requirements)

Depending on the specific legal basis for the exchange, information exchange should meet certain requirements. Some of those requirements are designed to avoid unnecessary burdens on other tax administrations to gather information that the requesting tax authorities may have obtained by themselves or that have little or no potential relevance in terms of protection of their tax revenues.

Typically, two conditions must be met:

- That the request has a foreseeable relevance<sup>139</sup> in terms of potential use to discover tax shortfalls or tax infringements, and;
- That the requesting tax authorities had previously exhausted their domestic sources of information before asking for other tax authorities' co-operation.

The foreseeable relevance of the request of information can be established when, at the time of the request, the requesting authority considers that, in accordance with its national law, there is a reasonable possibility that the requested information is relevant to the tax affairs of one or several identified taxpayers.<sup>140</sup>

<sup>139</sup> See Article 4.1 of the MAAC and Article 26 of the OECD Model Tax Convention.

<sup>140</sup> A notable recent example of the interpretation of the concept of "foreseeable relevance" regarding international requests of information is the case decided on 6 October 2020 by the ECJ (grand Chamber) in the cases C-245/19 and C-246/19, *État luxembourgeois vs. B and État luxembourgeois vs. B and others* (available at [https://eur-](https://eur-lex.europa.eu/juris/ces/docprep/?uri=CELEX:62020C0245&id=1)

The foreseeable relevance condition should avoid so-called ‘fishing expeditions’, i.e. requests of information that lack a clear scope and defined purpose and are therefore unlikely to be relevant for the tax affairs of a given person or an ascertainable group of given persons. The boundaries between foreseeable relevance and fishing expeditions are easy to establish in theory but difficult to ascertain in practice. A case-by-case examination of the information requests must be made in order to appreciate the foreseeable relevance for tax control purposes.<sup>141</sup>

In order to establish the foreseeable relevance of the information they are requesting, the requesting tax authorities should provide explanations about the intended use of the requested information and why they consider that the requested information is controlled by the person subject to the jurisdiction of the requested authority.

In some cases, the requesting tax authority may have no prior individual identification details for the person(s) whose information is sought, but describe a group of taxpayers who cannot be identified individually by name or otherwise on the basis of a common set of characteristics. These types of “group requests” will normally meet the standard of foreseeable relevance when the requesting tax authority describes the common set of characteristics shared by the group members and offers explanations about the potential non-compliance patterns of the group members to the requested authority.

The possibility of carrying out group requests under the standard of foreseeable relevance is of particular importance in pursuing VAT compliance in a cross-border context. This is because the relevant information may be under the control of a non-established taxpayer and may relate to groups of suppliers/sellers sharing tax risk patterns and whose individual prior identification details would be impossible to establish by the requesting authorities.

#### ***(ii) Administrative co-operation with a view to enforcing VAT collection (debt recovery)***

Enforced debt recovery for unpaid VAT of non-established taxpayers raises additional challenges for tax authorities. This may be the case when the taxpayer submitted a timely and valid VAT return under a simplified compliance regime scheme but failed to pay the tax due (e.g. it requested to pay in instalments but did not fulfil its duty). This may also be the case when the tax authorities carried out a control procedure, as a result of which a tax assessment was made along with a VAT payment obligation.

When a non-resident supplier is unwilling to pay the VAT it owes, the main difficulty in enforcing collection of the tax due is that the taxpayer may have no assets in the taxing jurisdiction. If such assets (e.g. financial assets, immovable properties, intangible properties, commercial credits, etc.) do exist, the tax authority may seize them as collateral or freeze them to force settlement. The tax authorities of the country where VAT is due should thus request administrative co-operation from those tax authorities where the taxpayer is established, or where the taxpayer has assets that authorities might seize.

International administrative co-operation tools for enforced tax debt collection typically cover:

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[lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62019CA0245&rid=1](http://lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62019CA0245&rid=1)). The ECJ considered as foreseeably relevant the request of information where such a request indicates the identity of the person who has the information in question that of the taxpayer subjected to the investigation that originated the request for information exchange and the period to which the latter extends. If the request refers to contracts, invoices or payments then, even where not precisely identified, these can be foreseeably relevant if delimited by criteria based: firstly, on the fact that they were respectively executed or made by the person who possesses the information; secondly, in the circumstance that they were formalised during the period to which said investigation refers; and, thirdly, in their relationship with the investigated taxpayer.

<sup>141</sup> For a deeper analysis of the concept of foreseeable relevance, see the commentaries to Article 26 of the OECD Model Tax Convention.

- Requests of information that the requested authority can obtain according to their domestic law and that may be useful for tax collection purposes.
- Requests of notification of tax assessments and orders for VAT payment, so that the taxpayer's right to make appeals is respected at all times.
- Requests for other tax authorities to take effective action to enforce recovery of unpaid VAT debts. This may take the form of stronger sanctions such as enforced seizures of taxpayers' assets (financial assets, commercial credits, properties, etc.) and typically will require the prior exhausting of any recovery actions in the country of taxation before requesting the international administrative co-operation.

Regarding the potential risks of taxpayers taking actions to avoid tax debt recovery measures (e.g. transfer of financial assets to other jurisdictions or to third parties before the VAT debt is definitively assessed), or where there are no assets to seize in the country where VAT is due, cautionary measures may be requested from other tax authorities.

By analogy to the analysis of procedures in connection with the exchange of information, the request must be based on an existing agreement between the requesting tax authorities' country and the requested tax authorities' country covering mutual assistance for VAT recovery actions. In case of surcharges, administrative penalties, late payment interest, etc., the existing agreement and legal tools should also include these specific concepts within their scope.

In this context, it is important to note that some jurisdictions have made reservations to existing legal instruments with respect to their obligations to provide assistance in recovery. For example, a majority of the analysed LAC jurisdictions (see Table I.1 in Annex I) have made similar reservations.

### *(iii) Joint audits*

There is no internationally agreed legal concept of joint audits. Broadly speaking, joint audits are a tool for administrative co-operation in tax matters that combine selected existing tools that are employed in connection with such co-operation. These include: exchange of information, compliance activity focused on one taxpayer (or a group of taxpayers) simultaneously performed by more than one set of tax authorities and, occasionally, in the presence of tax officers from different jurisdictions performing tax audit and compliance controls together in a particular jurisdiction.<sup>142</sup> The Multilateral Convention on Mutual Administrative Assistance in Tax Matters can facilitate joint audits by means of the different forms of assistance for which it provides. Reservations on joint audits are not allowed as such under the Convention. However, the reservations allowed by the Convention may limit the applicability of this tool for VAT purposes. This topic is further analysed in Annex I.

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<sup>142</sup> In the OECD Joint Audit report (2010) (available at <https://www.oecd.org/tax/administration/45988932.pdf>), a joint audit is described as two or more jurisdictions joining together to form a single audit team to examine an issue(s)/transaction(s) of one or more related taxable persons (both legal entities and individuals) with international business activities, perhaps including international transactions involving related affiliated companies operating in the participating jurisdictions, and in which the jurisdictions have a common or complementary interest. In such a situation, the taxpayer would present and share relevant information with the joint audit jurisdictions and the team would include Competent Authority representatives from each jurisdiction. A joint audit can be activated for all compliance activities that can be accommodated through (1) the competent authority process outlined in the tax treaties between the participating revenue bodies and (2) the legal framework that guides the limits of collaboration between the participating parties.

Generally speaking, joint audits have been more widely considered in the context of direct tax compliance than in the audit of consumption taxes.<sup>143</sup> One of the reasons why joint audits have been considered primarily in direct rather than indirect taxation is the higher risk of double taxation or non-taxation arising out of transfer pricing disputes, questions of residence or permanent establishment, etc., and the need to prepare for a Multilateral Agreement Procedure (MAP).

A VAT joint audit may be considered as a possible enforcement option when this tool adds value compared to other administrative co-operation tools, and where there is a common or complementary interest of the concerned jurisdictions in the fiscal affairs of one or more related taxpayers.

One of the main advantages of a joint audit compared to other co-operation tools is the possibility of reaching a common conclusion, between tax administrations, on the examined facts and their tax consequences. The commitment to arrive at such a common conclusion should be supported by a clear legal foundation at both the international and the domestic level. This commitment between the jurisdictions concerned is particularly important where there is no common legal basis for the allocation of VAT taxing rights overriding national legislation.<sup>144</sup> Therefore, an area in which joint audits may be particularly useful relates to the proper application of different countries' domestic VAT allocation rules that may lead to either double taxation or double non-taxation. These issues may arise because of countries' use of different proxies and criteria for determining the place of taxation of digital supplies of services and intangibles leading to conflicting conclusions among two or several countries.

To ensure full access to the relevant information in cross-border VAT compliance activity, the participation of the jurisdiction where the taxpayer is established or where the information is held is essential.

### **5.7.3. Multilateral Convention on Mutual Administrative Assistance in Tax Matters<sup>145</sup>**

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (hereafter, "MAAC") (OECD, 2011<sup>[97]</sup>) is the most comprehensive multilateral instrument available for all forms of tax co-operation to address tax evasion and avoidance. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. It can also facilitate joint audits.

The MAAC was developed jointly by the OECD and the Council of Europe in 1988. It was amended by the 2010 Protocol, which opened the MAAC to all countries (and aligned it to the international standards on

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<sup>143</sup>The OECD devoted two main documents to 'Joint Tax Audits': OECD (2010), *Joint Audit Report* at <https://www.oecd.org/tax/administration/45988932.pdf> and OECD (2019), *Joint Audits 2019 Enhancing Tax Co-operation and Improving Tax Certainty* at <https://dx.doi.org/10.1787/17bfa30d-en>.

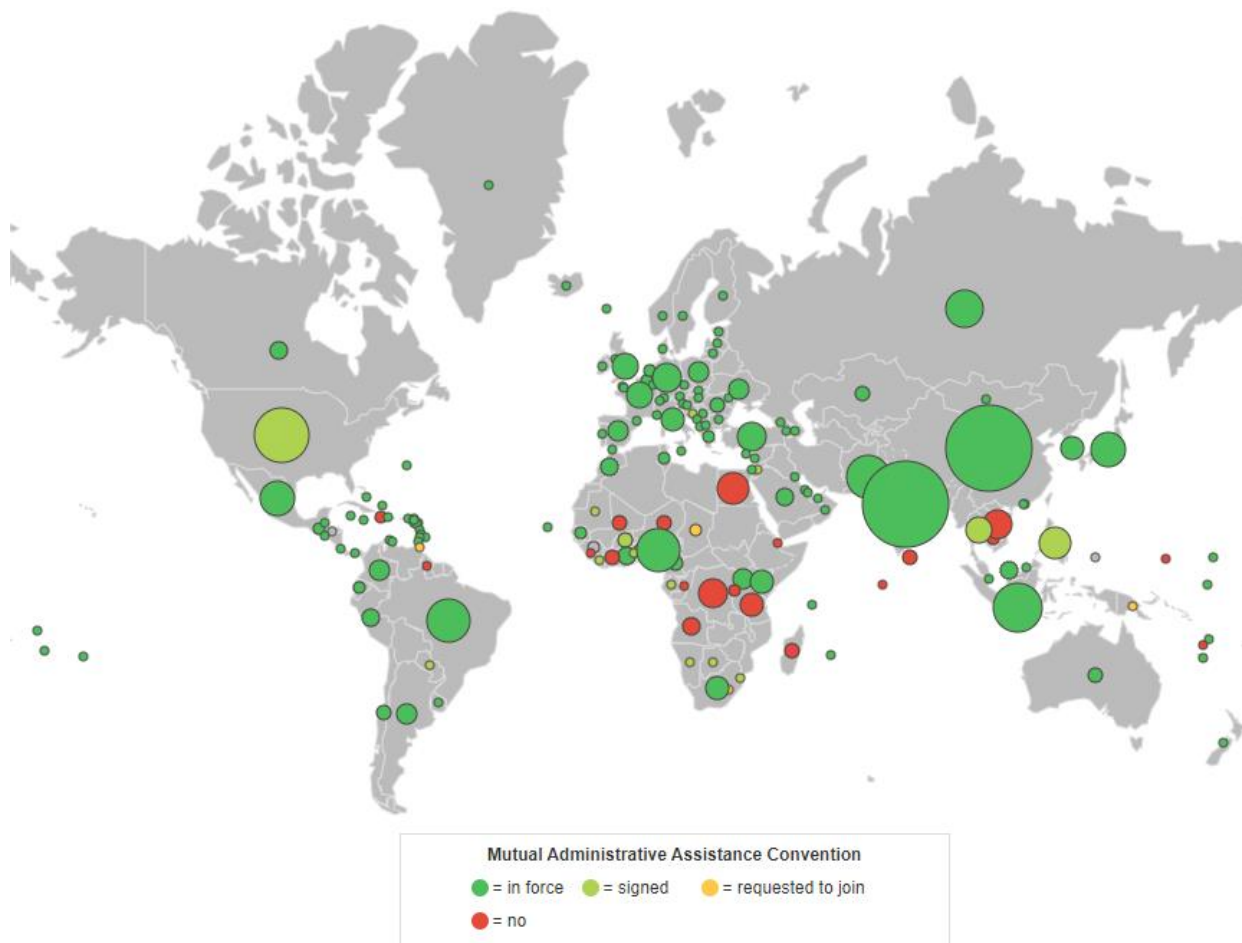
The 2010 report was produced by a group of 13 countries of the Forum of Tax Administrations (FTA), in a context of their prior experiences with other administrative co-operation tools. At the time of the report's publication, however, no country had any experience with joint audits. The 2019 report was produced by seven members of the FTA and is focused on direct taxation.

<sup>144</sup> In contrast to the legal framework for taxes on income and capital covered by bilateral tax treaties or for VAT between members of a regional agreement subject to a common legal base (such as the EU Member States subject to common VAT Directives) there is often no international legal framework for VAT taking precedence over national legislation.

<sup>145</sup> This subsection is based on Chapter 4.A.3 of the report: OECD (2012), *International Co-operation against Tax Crimes and Other Financial Crimes. A catalogue of the main instruments* at <https://www.oecd.org/ctp/exchange-of-tax-information/international-co-operation-against-tax-crimes-and-other-financial-crimes-a-catalogue-of-the-main-instruments.pdf>.

transparency and exchange of information for tax purposes). It has been subscribed to by 141 jurisdictions as of 16 March 2021.<sup>146</sup>

**Figure 5.2. Map of parties to the MAAC**



Note: Status as of December 2020 (exchange of information on request).

Source: OECD at <https://www1.compareyourcountry.org/tax-cooperation/en/0/623/default>.

The MAAC states that the Parties shall provide administrative assistance to each other in tax matters (Article 1). It is intended to have very wide scope as it “covers all forms of compulsory payments to general government ... with the sole exception of customs duties and all other import-export duties and taxes which are covered by the international *Convention on Mutual Administrative Assistance for the prevention, investigation and repression of customs offences*, prepared under the auspices of the Customs Co-operation Council.” Comm. to Art. 2, n. 25 (emphasis supplied) (OECD, 2011<sup>[97]</sup>).

This MAAC is of special importance for this Toolkit, as it explicitly includes VAT among the taxes covered by its provisions (Article 2.1.b.iii.C). However, Article 30 of the Convention allows the subscribing jurisdiction to reserve the right not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, which includes general

<sup>146</sup> For an updated list of countries’ status on the Convention application, see: [http://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf).

consumption taxes such as VAT. The existence of individual country reservation for the assistance in the VAT area should be analysed prior to sending an information request. Annex I.1.1 contains a list of reservations from LAC jurisdictions.

The main types of administrative co-operation tools are:<sup>147</sup>

- **Exchange of information** (Chapter III, Section I, Art. 4-10). The Parties shall exchange any information that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by the MAAC. The MAAC allows information to be exchanged upon request (Art. 5), automatically (Art. 6) or spontaneously (Art. 7). The Convention also provides for simultaneous tax examinations (Art. 8) and tax examinations abroad (Art. 9).
- **Exchange of information on request** (Art. 5). At the request of the applicant State, the requested State shall provide the applicant State with any information that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by the MAAC which concerns particular persons or transactions (Art. 5, para 1). If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested (Art. 5, para 2).
- **Automatic exchange of information** (Art. 6). Two or more Parties shall automatically exchange information with respect to categories of cases and in accordance with procedures, which they shall determine by mutual agreement.
- **Spontaneous exchange of information** (Art. 7). A Party shall, without prior request, forward to another Party information of which it has knowledge in the circumstances set forth in Art. 7, para 1.
- **Simultaneous tax examinations** (Art. 8). A simultaneous tax examination is an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain (Art. 8, para 2). The MAAC provides that cases and procedures for simultaneous tax examinations shall be determined by consultations between the Parties, at the request of one of them (Art. 8, para 1).
- **Tax examinations abroad** (Art. 9). At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State. All decisions with respect to the conduct of the tax examination shall be made by the requested State.
- **Assistance in recovery** (Chapter III, Section II, Art. 11-16). Under Article 11, para 1, at the request of the applicant State, the requested State shall take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims, except in relation to time-limits which are governed solely by the laws of the applicant State (Art. 14) and in relation to priority (Art. 15). This shall apply only to tax claims, which form the subject of an instrument permitting their enforcement in the applicant State, and, unless otherwise agreed between the Parties concerned, which are not contested. Therefore, where the claim is against a person who is not a resident of the applicant State, the assistance in recovery shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested (Art. 11, para 2).

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement (Art. 12).

- **Service of documents** (Chapter III, Section III, Art. 17). At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial

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<sup>147</sup> See Articles 4 to 17 of the MAAC.

decisions, which emanate from the applicant State and which relate to a tax covered by the MAAC. The requested State shall effect service of documents: a) by a method prescribed by its domestic laws for the service of documents of a substantially similar nature; b) to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws. A Party may effect service of documents directly through the post on a person within the territory of another Party.

The instrument can be used (Art. 3) by the competent authorities designated by the Parties for the purposes of administrative assistance under the Convention, listed in Annex B to the Convention.<sup>148</sup>

The contents of the request and information to be provided by the applicant State is indicated in Art. 18 of the MAAC.

Specific provisions apply to any request for assistance in recovery under Section II of the MAAC (Art. 13).

Article 21 sets limits to the obligation to provide assistance. However, a requested State shall not decline to supply information to a treaty partner solely because the information is held by a bank or other financial institution (Art. 21, para 4).

Any information obtained by a Party under the MAAC shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards that may be specified by the supplying Party as required under its domestic law (Art. 22, para 1).

Information shall be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes (Art. 22, para 2).<sup>149</sup>

The MAAC states that the possibilities of assistance provided by it do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters (Art. 27, para 1).

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<sup>148</sup> Annex B of the Convention is available at

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660d>

Most of the Parties designated as competent authority the Minister of Finance and the Tax Administration or its authorised representative. A more detailed and updated list of competent authorities, including name and contact details of tax officials directly in charge of dealing with requests of assistance is available to the Parties to the Convention.

<sup>149</sup> Notwithstanding, information received by a Party may be shared with other law enforcement authorities and used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use (Art. 22, para 4).

## A Toolkit for Becoming a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters

The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) has produced a Toolkit for Becoming a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD, 2020<sup>[98]</sup>).

This toolkit was developed in the context of the COVID-19 crisis, as a form of providing technical assistance to jurisdictions during challenging times for capacity building activities. Tax co-operation will certainly be instrumental for the post-COVID-19 recovery and fiscal consolidation.

This toolkit provides detailed guidance for jurisdictions preparing to join the MAAC. It outlines the benefits of joining the MAAC, provides an overview of its main provisions, its relationship with other treaties and legal instruments that facilitate administrative co-operation in tax matters, and a step-by-step guide to becoming a Party to it, from the preparation stage including providing answers to the confidentiality questionnaire, to the signature and deposit of instruments of ratification, acceptance or approval. It also contains other technical and logistic aspects. The toolkit highlights the key role of the Co-ordinating Body and the technical assistance that the Global Forum can provide to its members when joining the Convention. Jurisdictions may make use of this toolkit during different stages of the process.

The toolkit on becoming a party to the MAAC is divided into five parts that are organised as follows:

- **Section 1** briefly highlights the origin and purpose of the MAAC as well as the importance of the 2010 Protocol in opening it up for signature and ratification for jurisdictions that are not members of the OECD or the CoE. It also explores the key benefits that a country can derive from joining the MAAC even where it already has a network of bilateral treaties and legal instruments to facilitate the administrative assistance in tax matters.
- **Section 2** outlines the key provisions of the MAAC. It draws special attention to the different forms of assistance that it can facilitate and provides examples on how jurisdictions have been using it, both for exchange of information (EOI) and beyond. This part also elaborates on the composition, role, functions and operation of the Co-ordinating Body as well as those of the OECD and the CoE, as the Depositaries, in the implementation of the Convention.
- **Section 3** details the procedure for becoming a Party to the MAAC with reference to the templates used in practice, providing examples on how to meet the requirements when preparing the request as well as the steps and substantive requirements for joining it.
- **Section 4** briefly highlights the critical role that the MAAC plays in the implementation of the Common Reporting Standard (CRS) for the automatic exchange of financial account information and the Base Erosion and Profit Shifting (BEPS) Actions relating to tax transparency, particularly Country-by-Country Reporting (CbC Reporting).
- **Section 5** highlights the logistics and financial aspects of becoming a Party to the MAAC.
- The Annexes contain the relevant templates and annotated documents related to the process of joining the MAAC as well as useful resources.

# 6

## **Checklists to support the implementation of the recommended policy framework for the collection of VAT on digital trade**

## Introduction

Sections 3A and 3B of this Toolkit set out the recommended policy framework for the effective collection of VAT on internationally traded services and intangibles and internationally traded low-value goods. This policy framework focuses on the VAT challenges resulting from digital trade growth, particularly the collection of VAT on online (Internet) sales of services, intangibles and digital products (Section 3A) and on the importation of low-value goods from online sales (Section 3B) by non-resident businesses. Sections 4 and 5 provide detailed guidance in respect of the practical administrative, operational and compliance issues concerning the design and implementation of these policies.

This Section provides checklists to assist tax policy officials and administrators in designing policies and in developing legislative and administrative reform to implement the policy principles and guidance set out in Sections 3A and 3B and in Sections 4 and 5 of this Toolkit. These checklists outline the main aspects for tax policy officials and administrators to consider in making the necessary key policy decisions and in integrating these policies into their existing VAT and broader legal and administrative frameworks.

These checklists focus on the two main areas where digital trade growth creates the most pressing challenges for VAT compliance and administration, namely:

- The collection of VAT on supplies of services and intangibles (including online supplies) to final consumers (B2C) by non-resident suppliers (including online sellers, online marketplaces and other digital platforms) – Checklist 1.
- The collection of VAT on low-value goods that are imported following the online sale of these goods to final consumers (B2C) by non-resident suppliers (including online sellers, online marketplaces and other digital platforms) – Checklist 2.

Checklists 1 and 2 are complemented with two checklists that summarize core aspects of the approach to implementing the supporting operational and IT infrastructure (Checklist 3) and appropriate audit and risk management strategies (Checklist 4). These checklists concentrate primarily on sales by non-resident suppliers to final consumers (B2C), as opposed to business-to-business (B2B) supplies, as that is the area that causes the main challenges and revenue risks for tax authorities. Sections 3A and 3B also include guidance for the VAT treatment of international B2B supplies. That guidance is relatively straightforward and has therefore not been included in these checklists. The Toolkit recognises that jurisdictions may operate a VAT framework that does not distinguish between B2C and B2B supplies. The Toolkit, and the checklists in this section, provide guidance on the possible application of the relevant policy options in the context of a framework that does not distinguish between B2C and B2B supplies, where appropriate.

The checklists in this Section focus primarily on VAT laws. However, in respect of the collection of VAT on low-value goods, there are likely to be customs law implications that also require consideration. More generally, VAT law often does not operate in isolation from other tax law and can sometimes defer to other tax law in respect of issues such as the administration of penalties. In addition, international legal frameworks to which jurisdictions may be party, such as a free trade agreement, may also compel jurisdictions to act in accordance with legally binding standards, which in turn could limit their ability to frame VAT laws that target non-resident businesses. Therefore, it is important that jurisdictions, in considering changes to their VAT laws, carefully consider the interaction of potential changes with other laws, particularly those associated with binding international obligations. Jurisdictions will potentially need to effectuate changes in these wider laws to support VAT reforms or adherence to other legal obligations associated with those VAT reforms.

Designing new laws can be a complex process. Successful implementation of new laws will require incorporating them effectively into an existing body of law that will often be lengthy and the product of decades of complex amendments and superseding clauses. There is not an easy one-size-fits-all standard solution for implementing the recommended solutions for the collection of VAT on digital trade into an

existing VAT and legal framework. This Toolkit therefore emphasises that it is neither possible nor desirable to provide model legislative language that tax authorities can or should simply transpose into national legislation. Jurisdictions should remain aware, therefore, that the guidance in this section is not prescriptive and they should treat it as non-exhaustive “checklists” to support policy design rather than as “models”. The checklists include references to the most relevant components of the Toolkit that provide further detailed guidance in respect of the relevant checklist item.

## Checklist 1: Designing a policy framework, legislation and administration for international B2C supplies of services and intangibles

### Key to abbreviations in the legislative checklist:

- **Law (P)** = Primary law
- **Law (S)** = Secondary law
- **Admin** = Administrative processes, infrastructure and guidance
- = It would generally be used as primary source to regulate the relevant issue
- = It would generally not be used as primary source to regulate the relevant issue

| COMPONENTS OF VAT LEGISLATION / ADMINISTRATION AND GUIDANCE  | Law (P)                             | Law (S)                  | Admin                    | Main Toolkit references   |
|--|-------------------------------------|--------------------------|--------------------------|---|
| <b>ESTABLISHING THE RIGHT TO IMPOSE VAT – PLACE-OF-TAXATION RULE</b>   |                                     |                          |                          |   |
| <p><b>Place-of-taxation rule by reference to the consumer's usual residence</b></p> <ul style="list-style-type: none"> <li>• Such a rule explicitly or implicitly establishes the jurisdiction's right to impose VAT on supplies of services and intangibles to final consumers (B2C supplies) with usual residence in that jurisdiction.</li> <li>• The location of the supplier is in principle not relevant for determining the jurisdiction's right to impose VAT on these supplies. The jurisdiction's right to impose VAT on these supplies is determined only by reference to the consumer's usual residence. The location of the supplier is important mainly for determining the mechanism to collect the VAT on B2C supplies of services and intangibles. Where the supplier is not located in the jurisdiction of taxation, this Toolkit recommends the application of a simplified registration and collection regime for collecting the VAT on B2C supplies of services and intangibles.</li> <li>• Note: where a jurisdiction's VAT regime does not distinguish between B2C and B2B supplies, this jurisdiction may wish to implement a place-of-taxation rule for supplies of services and intangibles by reference to the "location of the customer".</li> </ul> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <p><b>Subsection 3A.2</b><br/>page 54</p> <p><b>Subsection 3A.2.4</b><br/>page 60</p> |

The jurisdiction could then define the “location of the customer” (in primary or secondary legislation) as the “consumer’s usual residence” where the customer is a private individual and as the “place of permanent business presence or establishment” where the customer is a business.

#### Defining the meaning of a consumer usually resident in the jurisdiction of taxation

- By way of example, a definition could state that a consumer usually resident is:
  - A resident by reference to a definition that the jurisdiction typically uses to determine residence across a wide range of tax legislation (e.g. for personal income tax) and possibly also definitions that the jurisdiction uses in other areas of public administration, and that is:
  - A person or entity that is not a business registered for VAT; or
  - A business that is registered for VAT but is not making a purchase connected to its business activity (e.g. the purchase is fully for the personal use of the business owner or management); or
  - A VAT-registered business that only makes VAT-exempt supplies. Note that this may be challenging to apply in practice: a jurisdiction may wish to limit the scope of this criterion to business categories with a high-risk profile.

#### Ensuring the VAT-free treatment of “outbound” supplies

- The jurisdiction that implements a place-of-taxation rule by reference to the consumer’s usual residence must ensure that supplies to a consumer that has its usual residence outside this jurisdiction is relieved of any VAT. This is normally achieved by treating such a supply as “zero-rated” or “free of VAT” with a right to input-VAT recovery for the supplier. Such treatment is crucial to avoid double taxation and competitive disadvantage for exporters from VAT in the exporting jurisdiction increasing the price of their exports.

### DEFINITIONS AND SPECIAL PROVISIONS TO SUPPORT THE PLACE-OF-TAXATION RULE

#### Criteria and indicia for determining the consumer’s usual residence

- Jurisdictions are advised to provide clear and easily identifiable indicia for determining a consumer’s usual residence, in secondary legislation and/or administrative guidance.
- This could include information that is normally provided by customers to their suppliers, such as:
  - The customer’s billing address,



**Subsection  
3A.2.5**  
page 61

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| <ul style="list-style-type: none"> <li>– The customer’s bank details, such as the location of the bank account used for payment or the address of the customer held by the bank,</li> <li>– The customer’s credit card information, including the Credit card Bank Identification Number (BIN).</li> <li>• Jurisdictions may require that the determination of the consumer’s usual residence is further supported by appropriate indicia of residence, for instance in respect of online supplies, which may include: <ul style="list-style-type: none"> <li>– The contact telephone number,</li> <li>– Location of the customer telephone landline through which the service will be supplied,</li> <li>– the Internet Protocol (IP) address of the device used to make the online purchase or to download digital content,</li> <li>– Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used where a customer orders by mobile phone,</li> <li>– The customer’s trading history, which could include information on the predominant place of consumption, language of digital content supplied, or other commercially relevant information, such as a loyalty card or subscription numbers.</li> </ul> </li> <li>• Jurisdictions are advised to provide clear guidance for suppliers on what is required to evidence the determination of the place of usual residence of their customers. This could include: <ul style="list-style-type: none"> <li>– Requiring that the supplier evidences its determination of the place of taxation on the basis of two non-contradictory, pieces of information/indicia. Note however that emerging international practice often considers one piece of information sufficient, especially for lower-value transactions,</li> <li>– Providing certainty that compliant businesses, which have made reasonable efforts to determine and evidence their consumers’ usual residence, should in principle expect challenges only in case of abuse (“safe harbour”).</li> </ul> </li> </ul> |   |   |   | <p><b>Subsection</b><br/> <b>3A.2.6</b> – Specific observations for Latin American and Caribbean jurisdictions<br/> page 63</p>           |
| <p><b>Clarifying the scope of the supplies of services and intangibles for which the place of taxation is determined by reference to the consumer’s usual residence</b></p> <ul style="list-style-type: none"> <li>• It is assumed that the jurisdiction’s VAT laws already include a general definition of what constitutes a supply of a service and/or intangible. Some jurisdictions express the basic concept of services and intangibles in their law through a “negative” definition that articulates what they are not. For example, defining services and intangibles as “anything other than goods, and real or immovable property”.</li> <li>• If a jurisdiction opts for a broad approach, it could achieve this simply by indicating that the place of taxation is determined by reference to the consumer’s usual residence for all services and intangibles as defined in the VAT law that are supplied</li> </ul>  | ☑ | ☑ | ☑ | <p><b>Policy</b><br/> <b>Subsections</b><br/> <b>3A.3.5.(iii),</b><br/> <b>3A.2.3 and</b><br/> <b>3A.2.9</b><br/> pages 79, 60 and 69</p> |

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| <p>to a final consumer. The jurisdiction may wish to complement this with exceptions for the supplies it wishes to exclude, for instance:</p> <ul style="list-style-type: none"> <li>– “On-the-spot” supplies, i.e. services that are physically supplied and consumed at the same location such as services that are physically performed on the person (e.g. hairdressing, massage, beauty therapy, physiotherapy); restaurant and catering services, entry to cinema, etc. The place of taxation for these services is typically determined by reference to the place of performance or to the supplier’s location.</li> <li>– Supplies of services connected with immovable or movable property (for which the place of taxation may be determined by reference to the location of the property).</li> <li>• If a jurisdiction wishes to apply a targeted approach for determining the place of taxation of services and intangibles by reference to the consumer’s usual residence, then the law should provide a legal basis upon which suppliers can determine whether a category of services or intangibles is in scope of this place-of-taxation rule. <ul style="list-style-type: none"> <li>– In practice this may mean that the primary law delegates authority for the tax administration to issue secondary legislation or guidance setting out in detail for which supplies the place of taxation is determined by reference to the consumer’s usual residence.</li> <li>– Many tax administrations will use such a delegation to produce guidance setting out the broad principles for determining the scope and support this with an extensive list indicating the classification of the types or categories of services and intangibles for which the place of taxation is determined by reference to the consumer’s usual residence.</li> <li>– A jurisdiction may for instance only wish to capture a defined subset of “digital” or “electronic” services and “digital products”. They must then carefully define these types or categories of services and intangibles, possibly complemented with a non-exhaustive list of services and intangibles. The disadvantage of this approach is that it will require a continuous updating of definitions and/or the lists of services and intangibles that are in scope to reflect the continuous and rapid evolution of digital trade.</li> </ul> </li> </ul> |   |   |   | <p><b>Administration</b><br/> <b>Subsection 4A.2.3</b><br/> page 162</p> |
| <b>VAT LIABILITY – REGISTRATION AND COLLECTION MECHANISM</b>   |   |   |   |  |
| <p><b>Simplified VAT registration and collection regime for non-resident suppliers</b></p> <ul style="list-style-type: none"> <li>• A jurisdiction’s primary VAT legislation will normally make it clear that a business has an obligation to register for VAT when it makes supplies that are subject to VAT in that jurisdiction, subject to specific conditions (incl. a possible VAT registration threshold).</li> </ul>   | ☑ | ☑ | ☑ | <p><b>Policy</b><br/> <b>Subsection 3A.3</b><br/> page 70</p>            |

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| <ul style="list-style-type: none"> <li>• This Toolkit recommends that jurisdictions implement a simplified registration and collection regime for non-resident suppliers of services and intangibles to final consumers that have their usual residence in the taxing jurisdiction. Such a simplified compliance regime limits the associated compliance obligations to what is strictly necessary for the effective collection of the VAT on these supplies. It is recommended that primary legislation set out the scope and key elements of such a simplified registration and collection regime. Jurisdictions could achieve this through supporting provisions to the main existing provisions on standard registration and liability for the tax. Key elements and information include: <ul style="list-style-type: none"> <li>– Defining the scope of the simplified registration and collection regime. Jurisdictions may for instance wish to apply the simplified registration and collection regime exclusively to non-resident businesses that supply services and intangibles for which the place of taxation is determined by reference to the consumer’s usual residence. Alternatively, jurisdictions may wish to extend the scope of the regime (perhaps progressively) to a wider range of supplies of services and intangibles by non-resident suppliers.</li> <li>– Jurisdictions may wish to limit the application of the simplified registration and collection regime to suppliers that are not established in the jurisdiction of taxation nor have any other physical presence in that jurisdiction (non-resident suppliers). This excludes, for instance, a supplier that makes supplies through a business that it carries on within the jurisdiction. Such suppliers could be subject to the normal VAT registration and collection regime.</li> <li>– It is recognised that a jurisdiction may wish to extend the scope of the simplified registration and collection regime beyond B2C supplies, for instance to supplies to businesses located in that jurisdiction if the jurisdiction’s VAT regime does not distinguish between B2C and B2B supplies.</li> </ul> </li> </ul> |  |  |  | <p><b>Subsection 3A.3.4</b><br/>page 74</p> <p><b>Subsection 3A.3.5</b><br/>page 78</p> <p><b>Administration</b></p> <p>Detailed analysis of the main elements of administration for a simplified compliance regime at <b>Subsection 4C.1</b><br/>page 213</p> <p><b>Operational and IT infrastructure</b></p> <p><b>Section 4D</b><br/>page 250</p> |
| <p><b>Establishing the main features of the simplified VAT registration and collection regime</b></p> <ul style="list-style-type: none"> <li>• This could simply include reference to supporting legislation and guidance, which outlines the key features and operation if the primary legislation does not do so in detail. Core components of this guidance include the following: <ul style="list-style-type: none"> <li>– Registration procedure, including the elements of the online registration application, information requested for registration, and documentation</li> <li>– Invoicing, including the possible elimination of invoicing requirements for B2C supplies</li> <li>– Return procedures, including the required information, simplified VAT returns, electronic returns</li> <li>– Payments, including accepted payment methods</li> <li>– Record-keeping</li> </ul> </li> </ul>   |  |  |  |  |

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| <ul style="list-style-type: none"> <li>– Input tax recovery/refunds, including whether non-resident suppliers that register under the simplified compliance regime have the right to deduction and/or refund of any VAT incurred in the jurisdiction of taxation.</li> <li>• Where a non-resident supplier is allowed to choose between registering under the standard VAT regime and under a simplified regime, the VAT law will need to clarify the following aspects: <ul style="list-style-type: none"> <li>– How a supplier can determine its eligibility to register and elect to register.</li> <li>– When an election takes effect, noting the start of the election, and the date of effect of any cancellation.</li> <li>– The process by which a registrant in the simplified compliance regime may revoke an election or by which the tax authority can initiate revocation of the registration.</li> </ul> </li> <li>• Jurisdictions may need to further include cross-references to additional legislation, such as legislation that establishes criteria for registration forms that the tax authority can issue, and to guidance that specifies the format and information requirements of the registration form.</li> </ul>  |   |   |   |   |
| <p><b>If only applied to B2C supplies: how to determine the customer's status (business or private consumer)?</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions typically allow suppliers to rely on one or more indicia to establish their customer's status. Such indicia that are widely used include the following: <ul style="list-style-type: none"> <li>– An identification number, such as a VAT registration number or a business tax identification number indicating the business identity and registration of the customer.</li> <li>– A certificate issued by the customer's competent tax authority, which indicates the business identity and registration of the customer.</li> <li>– Information available in commercial registers.</li> <li>– Commercial indicia, such as the nature of the supply, the value of the supply, the customer's trading history with the supplier, and digital certificates, which separately or collectively may indicate whether the customer is a business or a private consumer.</li> </ul> </li> <li>• Where a supplier acting in good faith and having made reasonable efforts, is not able to obtain the appropriate documentation to establish the status of its customer, this could lead to a presumption that this is a private consumer (i.e. a non-business customer).</li> </ul> | ☑ | ☑ | ☑ | <p style="text-align: right;"><b>Policy</b><br/><b>Subsection 3A.3.5.(ii)</b><br/>page 78</p> <p style="text-align: right;"><b>Administration</b><br/><b>Subsection 4A.2.2</b><br/>page 159</p> |

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| <p><b>Assessing whether a supplier’s revenue exceeds the VAT registration threshold</b></p> <ul style="list-style-type: none"> <li>• Several jurisdictions have adopted registration thresholds in connection with VAT collection obligations as a means to minimise the risk of disproportionate administrative and compliance costs for businesses (notably SMEs) and tax administrations. A jurisdiction may wish to consider implementing a registration threshold for non-resident suppliers set at the same level as for domestic suppliers.</li> <li>• Jurisdictions that decide to implement a registration threshold for non-resident suppliers may wish to exclude supplies that would generate no net VAT revenues from the calculation of the threshold, such as VAT exempt or zero-rated supplies and B2B supplies that are subject to a reverse charge regime in the jurisdiction of taxation.</li> </ul>   | ☑ | ☑ | ☑ | <p><b>Policy</b></p> <p><b>Subsection 3A.3.5.(iv)</b><br/>page 81</p> <p><b>Administration</b></p> <p><b>Subsection 4B.2.1</b><br/>page 187</p> <p><b>Subsection 4C.1.1.(iii)</b><br/>page 218</p> |
| <p><b>Establish a full VAT liability regime for digital platforms</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions that wish to implement a full VAT liability regime for digital platform operators are advised to introduce appropriate provisions in their legislation setting out the circumstances in which an entity meeting the definition of a digital platform is fully liable for collecting and accounting for the VAT on supplies of services and intangibles by underlying suppliers carried out through their platform.</li> <li>• A jurisdiction could characterise a digital platform, for instance, as an entity providing a service (a “website”, “Internet portal”, “gateway”, “online store” or “marketplace”) that: <ul style="list-style-type: none"> <li>– Enables entities to make supplies to consumers through the platform; and</li> <li>– Delivers its service by means of electronic communication. Jurisdictions may need to define “electronic communication” or provide a reference to the relevant definition in another area of law.</li> </ul> </li> <li>• Full VAT liability provisions should set out the criteria for determining whether digital platforms perform sufficient critical functions to assume full VAT liability. These critical functions typically include at least one of the following: <ul style="list-style-type: none"> <li>– Controlling the terms and conditions of the underlying transactions (e.g. price, payment terms, delivery conditions) and imposing these on participants in the supply (buyers, sellers, transporters)</li> </ul> </li> </ul> | ☑ | ☑ | ☑ | <p><b>Policy</b></p> <p><b>Subsection 3A.4.3</b><br/>page 86</p> <p><b>Administration</b></p> <p><b>Subsection 4C.2</b><br/>page 234</p>   |

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- Involvement in the authorisation and processing of payments (either directly or indirectly through arrangements with third parties, including collection of payments from customers and transmission of payments to sellers)
  - Involvement in the delivery process and/or in the fulfilment of the supply (including influence over the conditions of delivery; transmission of approval to suppliers and instructions to transporters; provision of order fulfilment services with or without warehousing services)
  - Jurisdictions are advised to identify the platforms that are in principle excluded from the full liability regime because they do not perform sufficient critical functions to assume full VAT liability. This is for instance the case for platforms that only perform the following functions:
    - A telecommunications service (the only purpose of the service being to provide carriage of electronic communications), or
    - Data storage; or
    - A service consisting of one or more of the following:
      - Providing access to a payment system.
      - Processing payments.
      - Providing multiple-purpose vouchers (noting that VAT will in principle apply upon the redemption of these types of vouchers).
  - The full VAT liability regime must clearly identify the scope of the supplies for which the qualifying digital platforms will have full VAT liability, in particular:
    - Whether the regime applies to all supplies of services and intangibles carried out over such platforms (plus, potentially, supplies of goods; see checklist 2) or only to a subset of services and intangibles (for instance the supplies of services and intangibles for which the place of taxation is determined by reference to the customer's usual residence).
    - Whether the regime applies only to supplies by non-resident underlying suppliers or to all supplies that are within the scope of the regime regardless of the location of the underlying supplier.
  - Jurisdictions could complement this provision with an option for platforms and intermediaries that do not meet the conditions for full VAT liability to take on such full VAT liability for the supplies made by underlying suppliers through their platform.
  - Under the full VAT liability regime, the digital platforms are treated as the suppliers for VAT purposes in respect of the supplies that they facilitate through their platform for the underlying suppliers. Accordingly, the simplified registration and
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| <p>collection regime should apply to digital platforms in respect of the supplies for which they have VAT liability under the full liability regime.</p> <ul style="list-style-type: none"> <li>Note: Jurisdictions may wish to develop the relevant clauses to enable subsequent extension to B2C supplies of low-value goods (see checklist 2 below).</li> </ul>   |   |   |   |  |
| <p><b>Public lists of VAT-registered entities</b></p> <ul style="list-style-type: none"> <li>Jurisdictions that maintain a public register of VAT-registered entities should determine whether to include registrants under the simplified registration and collection regime on such a register. If they wish to exclude simplified compliance regime registrants, they should include a clause in the legislation establishing the simplified compliance regime to authorise exclusion.</li> <li>Publishing VAT registration numbers of non-resident suppliers that have registered under a simplified compliance regime can create significant fraud risks, particularly where this regime also applies to the collection of VAT on imports of low-value goods (see Section 4B.3.2).</li> </ul>   | ☑ | ☒ | ☒ | <p><b>Subsection 4C.1.1.(iv)</b><br/>page 219</p>  |
| <p><b>Restricting recovery of input VAT</b></p> <ul style="list-style-type: none"> <li>Jurisdictions may wish to prohibit or substantially restrict the ability of non-resident suppliers that have registered under the simplified registration and collection regime to recover VAT incurred in the jurisdiction of taxation.</li> <li>Jurisdictions could consider exceptions to the above general principle, including: <ul style="list-style-type: none"> <li>The possibility for non-resident suppliers to claim a refund of recoverable VAT under the normal refund procedure.</li> <li>The possibility for non-resident suppliers to register under the standard VAT regime, including the possibility to revoke their registration under the simplified registration and collection regime in favour of the standard VAT regime. Jurisdictions must then determine whether such suppliers will be able to claim input VAT on historical costs and, if so, how far back, subject to any general statute of limitations.</li> </ul> </li> <li>Note: Section 4C of the Toolkit analyses options for suppliers to recover input VAT under simplified compliance regimes.</li> </ul> | ☑ | ☑ | ☒ | <p><b>Policy</b><br/><b>Subsection 3A.3.4</b><br/>page 74</p> <p><b>Administration</b><br/><b>Subsection 4C.1.6</b><br/>page 227</p> |
| <p><b>Invoicing</b></p> <ul style="list-style-type: none"> <li>Jurisdictions may consider eliminating invoicing requirements for business-to-consumer supplies that are covered by the simplified registration and collection regime, in light of the fact that the customers involved generally will not be entitled to deduct the input VAT paid on these supplies.</li> </ul>   | ☑ | ☒ | ☒ | <p><b>Policy</b><br/><b>Subsection 3A.3.4</b><br/>page 74</p>  |

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| <ul style="list-style-type: none"> <li>• If invoices are required, jurisdictions may consider allowing invoices to be issued in accordance with the rules of the supplier's jurisdiction or accepting commercial documentation that is issued for purposes other than VAT (e.g. electronic receipts).</li> <li>• Jurisdictions could require VAT-relevant information to be included in the customer receipt if the issuance of VAT (or tax) is not required.</li> </ul>  |   |   |   | <p><b>Administration</b></p> <p><b>Subsection 4C.1.3</b></p> <p>page 220</p>   |
| <p><b>VAT returns and return periods under simplified registration and collection regimes</b></p> <ul style="list-style-type: none"> <li>• It is essential to the effective functioning of a simplified compliance regime that jurisdictions allow non-resident suppliers to file simplified VAT returns. These will generally demand less information and supporting evidence than the VAT returns that tax administrations would require suppliers to file under their standard VAT regime, where such suppliers would have an entitlement to input VAT deduction.</li> <li>• Jurisdictions typically require quarterly VAT returns under a simplified registration and collection regime for services and intangibles.</li> </ul>  | ☑ | ☑ | ☒ | <p><b>Policy</b></p> <p><b>Subsection 3A.3.4</b></p> <p>page 74</p> <p><b>Administration</b></p> <p><b>Subsection 4C.1.4</b></p> <p>page 224</p> |
| <p><b>Currency conversion for submission of VAT returns and execution of payments</b></p> <p>Secondary legislation or guidance is advised to set out methods for suppliers to convert the value of supplies they make for consideration in foreign currencies. Currency conversion is relevant both for the amounts reported in the VAT return as well as for the determination of the actual payment of VAT due to the tax authority. Examples of currency conversion methods that jurisdictions use are:</p> <ul style="list-style-type: none"> <li>• Foreign exchange rates published by the central bank, reserve bank or chief monetary authority of the jurisdiction of taxation publish.</li> <li>• Foreign exchange rates published by certain non-governmental entities, including commercial banks.</li> <li>• Fixed rates determined by an agreement between a supplier and customer for the duration of the agreement.</li> </ul> | ☒ | ☑ | ☑ | <p><b>Subsection 4C.1.7</b></p> <p>page 227</p>  |

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| <p><b>Record-keeping and provision of records</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions should state in legislation the type of records that they expect non-resident suppliers to maintain and for how long.</li> <li>• They should also prescribe requirements for the format and timeframes in which suppliers should provide these records to tax authorities.</li> <li>• As matters of good practice: <ul style="list-style-type: none"> <li>– Non-resident suppliers should keep reliable and verifiable records of the supplies they make into the taxing jurisdiction, preferably in electronic format.</li> <li>– Tax authorities are encouraged to limit the transactional data that suppliers must record to what is necessary to ensure that suppliers have charged and accounted for VAT correctly on each supply.</li> </ul> </li> </ul>  | ☑ | ☑ | ☒ | <p><b>Policy</b></p> <p><b>Subsection 3A.3.4</b><br/>page 74</p> <p><b>Administration</b></p> <p><b>Subsection 4C.1.5</b><br/>page 225</p> |
| <p><b>VAT reduced-rated (including zero-rated) and exempt supplies of services and intangibles</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions are advised to take account of existing VAT rules that provide for preferential treatment of supplies (including exemptions and reduced rates) subject to conditions that may not be obtainable for non-resident suppliers (e.g. regulatory approvals for certain educational, health or financial supplies).</li> <li>• Jurisdictions may wish to exclude such types of supplies from the simplified registration and collection regime, and thus apply the standard registration and collection rules. Alternatively, jurisdictions may consider delegating authority to the tax authorities to permit, at their discretion, non-resident suppliers to make certain supplies on an equivalent preferential basis (e.g. exempt or reduced rate basis under the simplified registration and collection regime).</li> </ul> <p><b>Other special schemes, including special margin schemes</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions should consider whether any special margin schemes, such as for gambling services, should be brought into the scope of a simplified registration and collection regime.</li> </ul> | ☑ | ☑ | ☑ | <p>Entry for checklist purposes only</p>   |
| <p><b>Transitional rules for progressive or periodic supplies</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions should consider the case for transitional rules for progressive or periodic supplies, which non-resident suppliers make under contracts into which they entered before the entry into force of the place-of-taxation rules by reference to the consumer's usual residence and the simplified registration and collection regime.</li> </ul>   | ☑ | ☑ | ☑ | <p>Entry for checklist purposes only</p> <p>See also<br/><b>Subsection 4C.1.7 (iii)</b></p>  |

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| <ul style="list-style-type: none"> <li>• Transitional rules could exempt such supplies for a certain, limited period of time to reduce administrative burdens for suppliers. Jurisdictions will in such case need to carefully set the timeframe to avoid creating an incentive for businesses and consumers to artificially arrange long-term contracts that would provide an opportunity to avoid VAT obligations in the jurisdiction of taxation.</li> <li>• Jurisdictions may find it necessary to produce secondary legislation, legal rulings and detailed practical guidance to explain how transitional rules would work in practice.</li> </ul>   |   |   |   | page 229   |
| <p><b>Rules on tax agents</b></p> <ul style="list-style-type: none"> <li>• OECD guidance recognises that compliance for non-resident suppliers could be further facilitated by allowing such suppliers to appoint a third-party service provider to act on their behalf in carrying out certain procedures, such as submitting returns. On the other hand, it does not recommend that jurisdictions impose a requirement for a local fiscal representative under a simplified registration and collection regime.</li> <li>• Jurisdictions that have implemented a requirement for non-resident suppliers to appoint a tax agent (or a fiscal representative) to comply with their VAT obligations in that jurisdiction could amend these provisions to abolish the requirement for such a tax agent for non-resident suppliers (and digital platforms) that have registered under the simplified registration and collection regime.</li> </ul> | ☑ | ☑ | ☒ | <p><b>Policy</b></p> <p><b>3A.3.5.(v)</b><br/>page 81</p> <p><b>3A.4.2</b><br/>page 85</p> <p><b>Administration</b></p> <p><b>Subsection 4C.3.4</b><br/>page 243</p> |
| <p><b>Consequential amendments to primary VAT laws, where certain definitions, special rules and schedules permit divergence from such primary laws</b></p> <ul style="list-style-type: none"> <li>• Where appropriate, jurisdictions should review their existing body of VAT laws to ensure that any exceptions to these provisions under the simplified registration and collection regime and under the full liability regime for digital platforms are properly reflected in primary law.</li> </ul>  | ☑ | ☑ | ☑ | Entry for checklist purposes only  |

## Checklist 2: Designing a policy framework, legislation and administration for imports of low-value goods – The “Vendor/Intermediary Collection” model

### Key to abbreviations in the legislative checklist:

- **Law (P)** = Primary law
- **Law (S)** = Secondary law
- **Admin** = Administrative processes, infrastructure and guidance
- = It would generally be used as primary source to regulate the relevant issue
- = It would generally not be used as primary source to regulate the relevant issue

| COMPONENTS OF VAT LEGISLATION / ADMINISTRATION AND GUIDANCE   | Law (P)                             | Law (S)                  | Admin                    | Main Toolkit references  |
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| <b>REFORMING PRIMARY LEGISLATION TO TRANSFER THE RESPONSIBILITY TO COLLECT VAT ON LOW-VALUE IMPORTS</b>   |                                     |                          |                          |  |
| <p><b>Reforming primary legislation for VAT and for customs processes to transfer VAT collection responsibilities to non-resident suppliers and/or digital platforms</b></p> <ul style="list-style-type: none"> <li>• This checklist concentrates exclusively on the design of an effective solution for jurisdictions to consider in addressing the challenge of collecting VAT on the rising volume of imports of low-value goods sold by non-resident suppliers to final consumers as a consequence of digital trade growth. This solution consists of: <ul style="list-style-type: none"> <li>– Relieving customs authorities from the task of collecting VAT on imports of such goods below the customs duty threshold (low-value goods),</li> <li>– Making the supplier (“vendor”) of these goods, or the digital platform or another intermediary that intervenes in the supply, liable for collecting the VAT and remitting it in the jurisdiction of taxation.</li> </ul> </li> <li>• This “vendor or intermediary collection” solution focuses on the importation of low-value goods that are sold to final consumers (B2C supplies) by non-resident businesses as this is the area that creates the main administrative challenges and revenue risks.</li> </ul> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <p><b>Policy</b></p> <p><b>Subsection 3B.2</b><br/>page 110</p> <p><b>Subsection 3B.3</b><br/>page 113</p> <p><b>Administration</b></p> <p><b>Subsection 4B.2</b><br/>page 186</p> |

- Many jurisdictions have implemented VAT simplification measures for the commercial importation of goods, which help to minimise cash-flow disruption and administrative burdens with respect to B2B transactions. These usually include some form of “postponed accounting” for VAT.
- To achieve the outcome outlined above, jurisdictions will need to revise their existing primary VAT and customs legislation to:
  - Relieve customs authorities of the obligation to act as the principal collector of VAT on imports of low-value goods as defined by law,
  - Impose registration and collection obligations on non-resident businesses that supply the imported low-value goods to final consumers in the jurisdiction of importation and/or on digital platforms and/or other intermediaries that facilitate such supplies. The simplified registration and collection regime as described above, for supplies of services and intangibles by non-resident suppliers, is then extended to facilitate the collection of VAT on imports of low-value goods from non-resident suppliers.
- Primary legislation will generally need to refer to supporting legislation to define the scope of the regime and its various operational aspects.
- These laws will essentially need to establish that the suppliers, or digital platforms or other intermediaries as defined by law will be liable for the VAT due on the imported goods or consignments that meet the following main criteria:
  - Individually have a customs value that is equal to or less than the customs duty relief threshold,
  - Are for delivery to an address in the jurisdiction of importation,
  - Are sold to a final consumer (B2C),
  - Are outside the jurisdiction of importation at the time of supply (note that a possible expansion to include goods sold by a non-resident business but delivered through a “fulfilment house” in the jurisdiction of taxation is discussed below).
- The core elements to consider are outlined in the following sections of this checklist. Note in particular the importance of the determination of the “taxing point” (the time of supply) for the VAT due on the imported goods at the time of sale of these goods rather than at the time of importation.

#### ADMINISTERING A SIMPLIFIED COMPLIANCE REGIME FOR NON-RESIDENT SUPPLIERS AND INTERMEDIARIES TO COLLECT VAT ON IMPORTS OF LOW-VALUE GOODS

##### Defining the low-value goods within the scope of the regime

- The solution described in this checklist is aimed at securing the collection of VAT on the importation of low-value goods sold to final consumers by non-resident suppliers. It transfers the obligation to collect and remit the VAT on the imported low-value goods as defined above to the non-resident supplier of the goods, or to a digital platform or another intermediary



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| <p>(such as a “redeliverer”) as described below. The central elements in defining the scope of the regime are thus the customer status of the purchaser (final consumer) and the value of the imported goods by reference to the customs value:</p> <ul style="list-style-type: none"> <li>– To define the customer status, the same approach can be applied as set out in the checklist for services and intangibles.</li> <li>– As regards the value of the imported goods, jurisdictions are advised to apply the regime for the imports of goods sold by non-resident suppliers with a customs value that is equivalent to or below the customs duty relief threshold in the jurisdiction of importation. This approach facilitates alignment between VAT and customs laws for determining whether goods are low value and thus limits the potential for double taxation or non-taxation. Cross-references to primary laws for customs may be helpful.</li> </ul> <ul style="list-style-type: none"> <li>• The jurisdiction should specify which types of goods are out of scope of VAT collection obligations, including <ul style="list-style-type: none"> <li>– goods with a value above the applicable customs duty low-value consignment relief thresholds,</li> <li>– goods subject to excise or equivalent duties like hydrocarbons, alcohol, tobacco, perfume, etc.</li> </ul> </li> <li>• Secondary legislation and/or technical guidance should clarify the treatment of low-value goods that form part of a single consignment containing multiple low-value goods, which collectively exceed the customs duty relief threshold. Similarly, legislation and guidance should cover the treatment of single consignments containing a mixture of low-value and high-value goods. In both cases, jurisdictions may need to update customs laws and processes.</li> <li>• Secondary legislation and guidance should set out rules for currency conversion at the time of supply. This will enable suppliers to calculate the value of goods in the currency of the jurisdiction of importation so as to determine whether or not they have the obligation to collect and remit the VAT in the jurisdiction of importation.</li> <li>• The definition of low-value goods that are subject to this regime should generally not include the importation of low-value goods in a B2B context. Secondary legislation and/or administrative guidance should cross-reference relevant legislation setting out the obligations for suppliers and customers in respect of the commercial importation of such goods.</li> </ul> |   |   |   | <p><b>C.f. Subsection 3A.3.5.(ii)</b> on determining customer status page 78</p> <p><b>Subsection 3B.7.1</b> page 121</p> <p><b>Subsection 3B.6</b> page 120</p> <p><b>Subsection 3B.9</b> page 124</p> <p><b>Administration</b></p> <p><b>Subsection 4B.2.3</b> page 189</p> <p><b>Subsection 4B.2.5</b> page 195</p> <p><b>Subsection 4B.2.7</b> page 198</p> <p><b>Subsection 4C.1.7.(iv)</b> page 229</p> |
| <p><b>Determining the taxing point (time of supply) at the point of sale</b></p> <ul style="list-style-type: none"> <li>• Transferring the liability for the VAT on imported low-value goods to the supplier or digital platform, or other intermediary as designated by law will require in principle that the VAT be collected at the time of sale of these goods. The VAT-liable</li> </ul>   | ☑ | ☑ | ☑ | <p><b>Policy</b></p> <p><b>Subsection 3B.3.2</b> page 114</p>   |

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| <p>supplier, digital platform or intermediary will then be required to remit the VAT collected at the time of sale of these goods, to the tax authorities in the jurisdiction of their importation, via a simplified registration and collection regime.</p> <ul style="list-style-type: none"> <li>• Jurisdictions are therefore advised to determine the taxing point (the time of supply) of such goods under the vendor/intermediary regime as being at the time of sale of these goods. In practice, the most practical approach is to define the taxing point (time of supply) at the time at which the payment for the sale of these goods has been accepted or authorised by the supplier, or by the VAT-liable digital platform or intermediary on behalf of the supplier. This creates the basis for moving the collection of VAT under the vendor/intermediary collection model away from the customs authorities at the border (see also below).</li> </ul>  |                                     |                                     |                                     | <p><b>Administration</b><br/><b>Subsection 4B.2.3</b><br/>page 189</p>  |
| <p><b>Establish the hierarchy of VAT liability when digital platforms and other intermediaries are involved</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions should establish the hierarchy of responsibility for collecting and remitting the VAT on imported low-value goods in situations where one or more entities in addition to the non-resident supplier, such as a digital platform, are liable for the VAT on these goods under that jurisdiction's laws.</li> <li>• Most jurisdictions that implement a vendor/intermediary collection model assign the liability to collect and remit the VAT on low-value goods imports to the digital platform that intervenes in the supply of these goods to final consumers in the jurisdiction of importation. These digital platforms are relieved of such liability only in specific circumstances described by law, in particular: <ul style="list-style-type: none"> <li>– The digital platform does not authorise the billing and the delivery of the supply, and does not directly or indirectly determine any of the terms and conditions under which the underlying supplier makes the supply.</li> <li>– The documentation provided to the customer identifies the supplier as the entity making the supply, not the digital platform.</li> <li>– The supplier and the platform have agreed that the supplier shall be liable for VAT.</li> </ul> </li> <li>• Certain regimes assign VAT liability for the low-value goods imports to “redeliverer” businesses if neither the underlying supplier nor any digital platform or any other party acting on behalf of the suppliers (e.g. a transporter) transports or assists in transporting the goods to the jurisdiction. Redeliverers are typically appointed by the purchaser of the goods to assist in buying, accepting and/or transporting the good to the buyer. If either the underlying supplier or a digital platform transports or assists in transporting the goods to the jurisdiction of consumption, then one of these entities will be made VAT-liable.</li> <li>• The hierarchy of entities responsible for the collection of VAT on imported low-value goods supplied to final consumers in the jurisdiction of importation is then as follows: <ol style="list-style-type: none"> <li>1. The digital platform that facilitates the supply;</li> <li>2. The (underlying) supplier;</li> <li>3. The redeliverer.</li> </ol> </li> </ul> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <p><b>Policy</b><br/><b>Subsection 3A.4.3.(ii)</b><br/>page 87</p> <p><b>Subsection 3B.2.4</b><br/>page 112</p> <p><b>Subsection 3B.4</b><br/>page 116</p> <p><b>Subsection 3B.5</b><br/>page 117</p> <p><b>Administration</b><br/><b>Subsection 4C.2</b><br/>page 234</p> <p><b>Subsection 4C.3.3</b><br/>page 242</p> |

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| <p><b>Reform VAT low-value consignment relief</b></p> <ul style="list-style-type: none"> <li>The introduction of the vendor/intermediary collection regime for low-value imported goods gives a jurisdiction the opportunity to reform its existing VAT low-value relief regime, if any, at the time of the introduction of the vendor/intermediary collection regime or progressively thereafter. If jurisdictions do choose to amend their existing thresholds, this will notably require changes to customs legislation, potentially both primary and secondary.</li> <li>Subsections 3B.4 and 4B.2.4 provide detailed guidance to jurisdictions on whether to maintain or abolish the VAT relief low-value threshold. These subsections explore the two approaches that jurisdictions have adopted in this context, i.e. a “No VAT thresholds” approach and a “VAT registration and transactional thresholds” approach.</li> </ul>  | ☑ | ☑ | ☒ | <p><b>Policy</b></p> <p><b>Subsection 3B.7</b><br/>page 121</p> <p><b>Administration</b></p> <p><b>Subsection 4B.1.4</b><br/>page 179</p> <p><b>Subsection 4B.2.4</b><br/>page 191</p>  |
| <p><b>Key specific changes to customs laws in respect of the collection of VAT by customs authorities</b></p> <ul style="list-style-type: none"> <li>Jurisdictions may need to enact legislation prescribing rules permitting customs authorities to waive the import VAT on imports of low-value goods for which VAT liability has been transferred to non-resident suppliers, or digital platforms or other intermediaries. The jurisdiction will need to decide whether such authority should be given: <ul style="list-style-type: none"> <li>For all imports of low-value goods for which VAT liability has been transferred to the suppliers, or digital platforms or other intermediaries, or</li> <li>Only for those consignments where customs authorities can validate that VAT is collected by the supplier or the digital platform or the intermediary that has VAT liability.</li> </ul> </li> </ul> <p>Subsections 3B.7 and 4B.2.4 provide in depth analysis on the policy choices for jurisdiction in this context.</p> <ul style="list-style-type: none"> <li>Customs legislation and guidance should also specify how customs officers should treat more complex consignments, mirroring VAT legislation and guidance for non-resident suppliers. These more complex cases include multiple low-value goods in a single consignment that collectively exceed the customs duty relief threshold or a consignment containing a mixture of low-value and high-value goods. <ul style="list-style-type: none"> <li>Jurisdictions may decide that such complex consignments are excluded from the application of the vendor/intermediary collection model and that VAT on the importation of these consignments may continue to be collected by the customs authorities.</li> </ul> </li> </ul> | ☑ | ☑ | ☑ | <p><b>Policy</b></p> <p><b>Subsection 3B.3</b><br/>page 113</p> <p><b>Subsection 3B.7</b><br/>page 121</p> <p><b>Administration</b></p> <p><b>Subsection 4B.2.4</b><br/>page 191</p> <p><b>Subsection 4B.2.5</b><br/>page 195</p> <p><b>Subsection 4B.2.7</b><br/>page 198</p> <p><b>Subsection 4B.3</b><br/>page 200</p> |

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|   |                                     |                                     |                                     | Annex E<br>page 384   |
| <p><b>Customs reporting requirements</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions will need to introduce provisions in customs legislation prescribing the information that must be provided to customs authorities in advance of, or at the time of, importation by suppliers, digital platforms or other intermediaries that are liable for VAT under the vendor/intermediary collection model. These provisions should also indicate how this information must be communicated to customs authorities. The main purpose of this reporting requirement is to provide evidence of the collection of the VAT by the supplier or the digital platform or the other intermediary that has VAT liability for the imported goods.</li> <li>• Such information should include: <ul style="list-style-type: none"> <li>– The VAT registration number or an alternative business ID of the supplier, or the digital platform or the intermediary that has VAT liability for the imported goods,</li> <li>– The appropriate evidence for determining the customer's status, including the VAT number or an equivalent identifier to support the treatment of a low-value goods importation as having a B2B character where applicable (and thus not subject to VAT liability for the supplier, digital platform or another intermediary under the vendor/intermediary collection regime);</li> <li>– Information to demonstrate that the VAT-liable supplier or digital platform or other intermediary has collected the VAT on the imported low-value goods that are subject to the vendor/intermediary collection regime.</li> </ul> </li> <li>• Section 4B.3 provides an analysis of such customs reporting requirements in jurisdictions that have already implemented a vendor/intermediary regime of VAT-collection on low-value goods imports (see in particular Annex E – “Examples of Information Reporting Requirements under Simplified Compliance Regimes for Imports of Low-Value Goods”).</li> <li>• Jurisdictions could legislate to delegate the authority to VAT and customs authorities to introduce new information requirements when required.</li> </ul> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <p><b>Policy</b></p> <p><b>Subsection 3B.5.2</b><br/>page 119</p> <p><b>Subsection 3B.7</b><br/>page 121</p> <p><b>Administration</b></p> <p><b>Subsection 4B.3.2</b><br/>page 202</p> <p><b>Subsection 4B.3.3</b><br/>page 203</p> <p><b>Subsection 4B.3.4</b><br/>page 205</p> <p><b>Annex E</b><br/>page 384</p> |
| <p><b>Foreign currency conversion for VAT collection on imports of low-value goods</b></p> <ul style="list-style-type: none"> <li>• Legislation for the vendor/intermediary collection regime should include provisions, or a cross-reference to provisions in supporting legislation, establishing a foreign currency conversion mechanism. These provisions should be consistent with the foreign currency conversion mechanism used by customs authorities. Foreign currency conversion options for jurisdictions to consider include: <ul style="list-style-type: none"> <li>– A rate that is published by the central bank of the jurisdiction of consumption or</li> </ul> </li> </ul>  | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <p><b>Subsection 4B.2.6</b><br/>page 197</p> <p><b>Subsection 4C.1.7.(iv)</b><br/>page 229</p>  |

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| <ul style="list-style-type: none"> <li>– a reference rate published by another central bank.</li> <li>– An exchange rate provided by a commercial foreign exchange trader (such as a bank).</li> </ul>  |   |   |   |   |
| <p><b>Supplier notifications for consumers</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions should specify the information that VAT-liable suppliers or digital platforms or other intermediaries must provide to consumers under the vendor/intermediary collection regime, such as a receipt or a (simplified) invoice. This information should specify the time limit within which suppliers must provide such documentation following the supply.</li> <li>• The foregoing obligation may require jurisdictions to issue guidance or a pro forma template that meets the standards embodied in general laws on tax administration.</li> </ul>   | ☑ | ☑ | ☑ | <p><b>Subsection 4C.1.3</b><br/>page 220</p> <p><b>Annex E</b><br/>page 384</p>   |
| <p><b>Refunds on incorrectly charged VAT</b></p> <ul style="list-style-type: none"> <li>• Suppliers or digital platforms may sometimes incorrectly charge VAT on the supply of low-value goods, notably when these goods are not subject to VAT under the vendor/intermediary collection regime. This may occur, for example, when goods were in fact high-value or part of a single consignment containing multiple goods with an aggregate value above the customs duty relief threshold. These VAT-liable suppliers or digital platforms, or other intermediaries, may then claim a refund of the VAT paid in the jurisdiction of importation under the vendor/intermediary collection regime.</li> <li>• To minimise risks of abuse, jurisdictions are advised to restrict access to such refunds and adjustments to situations where the supplier provides evidence of: <ul style="list-style-type: none"> <li>– The reimbursement of the VAT charged on the supply to the consumer; and</li> <li>– The payment of the import VAT to customs authorities, e.g. on the basis of a customs declaration or other information indicating the payment of the import VAT by the customer.</li> </ul> </li> </ul> | ☑ | ☒ | ☒ | <p><b>Subsection 4C.1.9.(v)</b><br/>page 233</p>  |
| <p><b>Expanding the scope of the vendor/intermediary collection regime to address the “fulfilment house” model</b></p> <ul style="list-style-type: none"> <li>• Non-resident suppliers of goods to final consumers are increasingly using a form of warehousing facility in the jurisdictions where their customers are located, where goods are stored in bulk so as to be available for rapid delivery to customers once they are sold. Such goods are thus already in the jurisdiction of the final consumer when sold by the non-resident supplier. Some non-resident suppliers have attempted to use this structure to evade VAT on their sales in the consumer’s jurisdiction.</li> <li>• To address this problem, jurisdictions can explicitly expand the legal basis of their vendor/intermediary collection regime to include all supplies non-resident suppliers make to consumers within their territory and not just to imported low-value goods.</li> </ul>  | ☑ | ☑ | ☑ | <p><b>Policy</b></p> <p><b>Subsection 3B.5.1</b><br/>page 118</p> <p><b>Administration</b></p> <p><b>Subsection 4B.2.8</b><br/>page 198</p> |

### Checklist 3: Operational and IT infrastructure, including project governance and communications strategies

Key to abbreviations in the legislative checklist:

- **Law** = Primary and secondary law
- **Admin** = Administrative processes, infrastructure and guidance
- **IT** = Operational and IT infrastructure
- **Comms** = Communications strategies and activity

| COMPONENTS OF POLICY AND ADMINISTRATION FRAMEWORK OR STRATEGY   | Law | Admin                               | IT                                  | Comms                               | Main Toolkit references                   |
|---|-----|-------------------------------------|-------------------------------------|-------------------------------------|---|
| <b>ESTABLISHING A ROADMAP FOR THE IMPLEMENTATION OF THE RECOMMENDED POLICY FRAMEWORK FOR VAT COLLECTION ON DIGITAL TRADE</b>  |     |                                     |                                     |                                     |   |
| <p><b>Establishing a robust project governance and project management structure for implementing the recommended policy framework for VAT collection on digital trade</b></p> <ul style="list-style-type: none"> <li>• Implementing the recommended policy framework for VAT collection on international B2C trade is a significant undertaking that requires robust project governance and project management, based on a detailed and realistic planning of the approach for undertaking all the main elements of policy design and implementation (“roadmap”). It is recommended that the simplified registration and collection regime for non-resident suppliers be developed in conjunction with, rather than after or in isolation from, the design and enactment of key legislation.</li> </ul> | -   | <input checked="" type="checkbox"/> | -                                   | -                                   | <b>Subsection 4A.1</b><br>page 139        |
| <ul style="list-style-type: none"> <li>• The main elements of a roadmap for implementation of the OECD policy framework are set out in Figure 4A.4 (Subsection 4A.1.2).</li> </ul>  | -   | <input checked="" type="checkbox"/> | -                                   | -                                   | <b>Subsection 4A.1</b><br>page 139        |
| <b>IDENTIFYING NON-RESIDENT BUSINESSES THAT MAY BE IN SCOPE OF THE REFORM – COMMUNICATION STRATEGIES</b>  |     |                                     |                                     |                                     |   |
| <p><b>Identifying foreign businesses (non-resident suppliers) that may have VAT registration and collection obligations following the implementation of the recommended policy framework</b></p>  | -   | -                                   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <b>Subsection 4A.2.3.(ii)</b><br>page 163 |

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| <ul style="list-style-type: none"> <li>• Tax authorities may find it difficult to readily identify all non-resident businesses that make significant sales of services and intangibles and/or low-value goods to consumers usually resident in their jurisdiction. Third-party data sources can be helpful in identifying these businesses. These can include: <ul style="list-style-type: none"> <li>– Financial service providers such as banks and payment service providers (PSPs).</li> <li>– Internet profiling through search engines, “website scraping” tools and the services of third-party, commercial data analysts.</li> <li>– Commercial data solutions providers.</li> <li>– Publicly available VAT registers detailing non-resident suppliers active in other jurisdictions.</li> <li>– The jurisdiction’s “Financial Intelligence Unit”, i.e. a government agency that monitors financial data from a wide variety of sources in support of various public policy objectives.</li> <li>– Exchange of Information (EOI) arrangements between jurisdictions and at multilateral level that can provide useful intelligence and data not in the public domain.</li> </ul> <p>Businesses’ own annual reports and other publicly available reports and analysis, both statutory and non-statutory.</p> </li> </ul>   |   |   |   |   | <p><b>Subsection 4C.4.2</b></p> <p>page 247</p> |
| <p><b>Communicating effectively with non-resident suppliers</b></p> <ul style="list-style-type: none"> <li>• Effective communication is critical in achieving high levels of compliance by non-resident suppliers. This needs to be aimed at ensuring that non-resident suppliers are fully aware of their obligations and the timeframes within which they need to take essential actions to ensure compliance with the new rules.</li> <li>• To maximise the effectiveness of their communication strategy to support the design, implementation and operation of a simplified compliance regime for non-resident suppliers, tax administrations are advised to consider the following approaches: <ul style="list-style-type: none"> <li>– Ensure early communication and consultation with non-resident businesses and other key stakeholders.</li> <li>– Use multi-channel media strategies to achieve greater coverage and awareness, including the use of social media (e.g. LinkedIn), media releases, presentations to representative organisations and forums and the provision of communication material to a wide range of organisations and stakeholders.</li> <li>– Provide easy-to-access comprehensive web guidance for non-resident businesses (and digital platforms and intermediaries) through a standalone page on the tax administration’s website.</li> <li>– Consider the development of key words and phrases (“metadata”) so that Internet search engines are able to best direct potential registrants to the right information on the tax authority’s website.</li> </ul> </li> </ul> | - | ☑ | ☑ | ☑ | <p><b>Subsection 4C.4.1</b></p> <p>page 244</p> |

- Make some or ideally all communication and guidance material available in English and in the language(s) of the jurisdiction's main trading partners, in addition to the jurisdiction's local language(s).
- Develop taxpayer assistance channels, including the provision of a dedicated email channel for non-resident businesses and/or phone numbers to a dedicated call centre.
- Internal communications and training for staff in the tax authority are required to directly support clients and administer the regime.
- A number of jurisdictions have undertaken a broader range of communication actions that may be useful to consider. These include the following:
  - One-to-one letter campaigns, targeted at the main non-resident suppliers, digital platforms and other key stakeholders.
  - Partnering with key stakeholders to host webinars to deliver interactive presentations and question-and-answer sessions about reforms. Large accounting firms and other private sector intermediaries, in addition to international and regional multilateral organisations, can play an important role.
  - Use of external public relations service providers to develop an international public relations campaign whereby key messages are placed in appropriate international media and industry publications.

#### OPERATIONAL AND IT INFRASTRUCTURE TO SUPPORT THE OPERATION OF A SIMPLIFIED REGISTRATION AND COLLECTION REGIME FOR NON-RESIDENT SUPPLIERS

##### Ensuring appropriate project governance for the implementation of the operational and IT infrastructure to support a simplified registration and collection regime for non-resident suppliers

- The principal operational and IT infrastructure for a simplified VAT compliance regime is a secure, user-friendly online portal through which non-resident suppliers can register for VAT and manage their VAT obligations.
- To achieve this, tax administrations are advised to create a clear governance structure and a core project team containing staff with sufficient skills and expertise to develop the IT systems and software that a simplified compliance regime for non-resident suppliers demands. A senior official in the tax administration should exercise leadership.
- Jurisdictions should implement safeguards and security procedures to make sure that operational and IT staff respect the tax administration's intellectual property rights over the systems and software, and that such staff develop and respect the confidentiality of the data they process and have access to.
- Staff leading the development of operational and IT infrastructure for a simplified compliance regime that includes low-value goods should have sufficient experience of customs processes and systems.

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**Subsection  
4D.1**  
page 254

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| <p><b>Establishing the objective of an online portal for a simplified compliance regime</b></p> <ul style="list-style-type: none"> <li>The project leadership should articulate the aim of the online portal to IT staff in simple, non-technical language, so that IT staff clearly understands what the portal is aimed to achieve.</li> </ul>   | - | - | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <p><b>Subsection 4D.2</b><br/>page 256</p>  |
| <p><b>Creating and implementing the operational and IT infrastructure for a simplified VAT compliance regime</b></p> <ul style="list-style-type: none"> <li>It is highly recommended that the login page to the online portal for a simplified compliance regime be hosted on the tax authority's existing website rather than creating a stand-alone Internet address. The reason for this is that the inclusion within existing webpages will provide a high level of certainty to users that the portal is legitimate and not a fraudulent site designed to steal funds from businesses.</li> <li>The online portal should at a minimum include the following functionalities: <ul style="list-style-type: none"> <li>Registration by non-resident suppliers. This includes, as a preliminary step, the creation of a secure digital identity credential. This is to ensure, to the greatest extent possible, that only legitimate businesses, which can prove their identity, have the ability to register for and access the online portal (see below).</li> <li>Filing of VAT returns through secure online forms and facilities to provide secure uploads of supporting information where appropriate.</li> <li>Payments through the portal or a robust process for managing external payments that suppliers make through independent channels such as a bank transfer.</li> <li>Updating and amending suppliers' key registration and account details, including the identity of personnel with authority to access the portal.</li> </ul> </li> <li>Tax administrations are advised to take account of certain additional factors that are important in creating an effective operational and IT infrastructure: <ul style="list-style-type: none"> <li>Prioritising the physical security and cyber security of tax administration hardware and servers that are critical to the core operations of the online portal.</li> <li>The use of secure channels for hosting the online portal and facilitating communications between the tax administration and non-resident suppliers, e.g. "HTTPS" websites and "TLS"-encrypted emails.</li> <li>Configuring the online portal to enable suppliers to undertake all activity and functions in English, the language(s) of major trading partners and the main language of the jurisdiction.</li> <li>The use of APIs to automate certain elements of how suppliers calculate their VAT liabilities, e.g. through links to comprehensive logs that tax administrations maintain of current and historical foreign exchange rates, VAT rates, some types of indicia for determining customer status, etc.</li> <li>Data storage capacity to permit file uploads and storage.</li> </ul> </li> </ul> | - | - | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <p><b>Policy</b></p> <p><b>Subsection 3A.3.4 and 3A.3.5.(vi)</b><br/>pages 74 and 82</p> <p><b>Administration</b></p> <p><b>Subsection 4D.3.1.(ii)</b><br/>page 263</p> |

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| <ul style="list-style-type: none"> <li>– Integration of a PSP’s “payment gateway” into the online portal where the tax administration would like to encourage direct settlement on the portal through card or e-wallet payments.</li> <li>– Early and regular consultation with the business community to test and improve the portal’s user-friendliness.</li> </ul>   |   |   |   |   |   |
| <p><b>Creating a robust, secure digital identity credential</b></p> <ul style="list-style-type: none"> <li>• The online portal for a simplified compliance regime will operate most effectively if non-resident suppliers can access it securely using their own digital identity credential, on which the tax administration has conducted validation checks. The tax administration should in turn require the supplier to validate their ownership of the credential at each attempt to access the portal by using multiple authentication factors.</li> <li>• Validating the digital identity credential can involve inspection of electronic copies of identification documents and certificates belonging to a supplier or the personnel it is authorising to register on its behalf.</li> <li>• Intermediaries such as tax agents will need to have permission to sign into the system as an approved user through their client’s digital identity credential or, alternatively, the tax administration should issue the intermediary with its own identity credential that it can ideally link to all of its clients’ accounts for the purpose of performing compliance actions on their behalf.</li> </ul> | - | ☑ | ☑ | ☑ | <p><b>Subsections 4D.3.1. and 4D.3.2.</b><br/>pages 259 and 266</p> |
| <p><b>Integrating the IT systems for a simplified compliance regime with existing IT systems for VAT and management of wider tax affairs</b></p> <ul style="list-style-type: none"> <li>• There are considerable advantages to integrating the online portal for a simplified compliance regime, wherever possible, with existing IT systems that tax administrations utilise to manage the VAT and wider tax obligations of businesses.</li> <li>• However, in practice this may prove challenging due to differences in information requirements and software compatibility between the simplified compliance regime and the systems that a tax administration utilises under its standard VAT regime.</li> </ul>   | - | - | ☑ | - | <p><b>Subsection 4D.4</b><br/>page 270</p>                          |
| <p><b>Determining the nature and level of resources a tax administration will need for building the operational and IT infrastructure for a simplified registration and collection regime</b></p> <ul style="list-style-type: none"> <li>• For the development of the online portal for the simplified VAT compliance regime tax authorities will normally have a number of options. These broadly include: <ul style="list-style-type: none"> <li>– constructing the online portal utilising in-house IT expertise;</li> <li>– outsourcing the project; or</li> <li>– selecting a commercial off-the-shelf (COTS) solution.</li> </ul> </li> </ul>   | - | - | ☑ | - | <p><b>Subsection 4D.5</b><br/>page 271</p>                          |

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| <p>or a combination of these. The decision will ultimately depend on an assessment of a range of circumstances, including the functionality of the tax administration's existing IT system, the in-house capability of IT staff, the time available for the implementation of the system, and the funding available.</p>  |   |   |   |   |  |
| <p><b>Front-office software developed by CIAT to facilitate the consistent implementation of simplified compliance regimes for non-resident suppliers in Latin America and the Caribbean</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions may consider utilising the open-source software for the implementation of a simplified compliance regime for non-resident suppliers in line with OECD guidance, which the Inter-American Center of Tax Administrations (CIAT) has developed. At the time of writing, the expectation is that the software will become publicly available during 2021.</li> <li>• When a jurisdiction does utilise this software, the alignment of its regime with OECD guidance will still ultimately depend on how the tax administration designs the overarching policy framework and administrative processes that the software helps to implement.</li> </ul> | - | ☑ | ☑ | - | <p><b>Subsection<br/>4D.6</b><br/>page 273</p> |

## Checklist 4: Audit and risk management

Key to abbreviations in the checklist:

- **Law** = Primary and secondary law
- **Admin** = Administrative processes, infrastructure and guidance
- **IT** = Operational and IT infrastructure
- **Comms** = Communications strategies and activity

| COMPONENTS OF AUDIT AND RISK MANAGEMENT STRATEGY   | Law                                 | Admin                               | IT                                  | Comms | Main Toolkit references   |
|--|-------------------------------------|-------------------------------------|-------------------------------------|-------|---|
| <b>OVERALL OBJECTIVES AND STRATEGY</b>   |                                     |                                     |                                     |       |   |
| <p><b>Risk management under a simplified registration and collection regime</b></p> <ul style="list-style-type: none"> <li>• Facilitation of compliance and effective communication are critical in achieving high levels of compliance and hence reducing risks related to non-resident suppliers.</li> <li>• Jurisdictions can adopt the following overarching framework for establishing a risk management strategy:               <ul style="list-style-type: none"> <li>– Identify risks</li> <li>– Assess and prioritise risks</li> <li>– Analyse compliance behaviour (causes, options for treatment)</li> <li>– Determine treatment strategies</li> <li>– Plan and implement strategies</li> </ul> </li> </ul> | -                                   | <input checked="" type="checkbox"/> | -                                   | -     | <p><b>Subsection 5.1.2</b><br/>page 280</p> <p><b>Subsection 5.1.4</b><br/>page 281</p> |
| <ul style="list-style-type: none"> <li>• Tax Administrations should undertake measures to ensure that the legal and organisational framework, the personal resources and the necessary infrastructure are in place to support a proper risk management and audit strategy.</li> </ul>  | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | -     | <p><b>Subsection 5.4</b><br/>page 304</p>   |

## EXTERNAL AUDIT AND RISK MANAGEMENT

**The main risks associated with the implementation and operation of a simplified compliance regime for non-resident suppliers**

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| <ul style="list-style-type: none"> <li>• Classification from a legal perspective               <ul style="list-style-type: none"> <li>– Risks resulting from unclear or inconsistent rules</li> <li>– Risks of unintentional non-compliance</li> <li>– Risks of intentional non-compliance</li> </ul> </li> </ul>   | ☑ | ☑ | - | - | <b>Subsection 5.2.1 (i)</b><br>page 283   |
| <ul style="list-style-type: none"> <li>• Risks associated with a simplified compliance regime can be identified and prioritised according to the different stages of implementation of the regime, in a sequential approach:               <ul style="list-style-type: none"> <li>– Preparatory phase: prior to the date of entry into force of the regime.</li> <li>– Implementation phase: from the date of entry into force of the regime.</li> <li>– Maturity phase: post-implementation once the regime has been operational for some time.</li> </ul> <p>As a general principle, tax administrations should calibrate their strategies and/or actions according to defined objectives and the severity of the case.</p> </li> </ul> | - | ☑ | ☑ | ☑ | <b>Subsection 5.2.1 (ii)</b><br>page 288  |
| <b>Components of successful risk management strategies</b> <ul style="list-style-type: none"> <li>• <b>Extensive use of third-party transactional data to assist compliance monitoring:</b> third-party transactional data can be particularly relevant in the context of a simplified compliance regime, notably in order to:               <ul style="list-style-type: none"> <li>– Identify the taxpayer population and in particular to detect non-registered businesses.</li> <li>– Detect filing inconsistencies or under-declaration.</li> <li>– Allow tax administrations to build up a better knowledge of certain economic sectors and/or of the risks faced.</li> </ul> </li> </ul>  | - | ☑ | ☑ | - | <b>Subsection 5.2.2 (i)</b><br>page 293<br><br><b>Subsection 4C.4.2</b><br>page 247 |
| <ul style="list-style-type: none"> <li>• <b>Development of data analytics tools:</b> A number of tax administrations have adopted an advanced data analytics strategy in order to obtain and process data not directly available from suppliers' reporting and record-keeping obligations or third-party actors that facilitate transactions.</li> </ul>  | ☑ | ☑ | ☑ | - | <b>Subsection 5.2.2 (ii)</b><br>page 295  |
| <ul style="list-style-type: none"> <li>• <b>Remote audits:</b> I.e. audits without the physical presence of tax officials at the premises of the taxpayer.</li> </ul>   | ☑ | ☑ | ☑ | - | <b>Subsection 5.2.2 (iii)</b><br>page 296   |

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| <p><b>The potential role of programs of co-operative compliance</b></p> <ul style="list-style-type: none"> <li>A co-operative tax compliance programme aims to voluntarily build a relationship of mutual trust between taxpayers and tax administrations to facilitate compliance while at the same time protecting tax revenues.</li> </ul>  | ☑ | ☑ | - | ☑ | <p><b>Subsection 5.5</b><br/>page 307</p>   |
| <p><b>INTERNAL AUDIT AND RISK MANAGEMENT</b></p>   |   |   |   |   |   |
| <p><b>General considerations</b></p> <ul style="list-style-type: none"> <li>Risk management in the context of a simplified VAT compliance regime for non-resident suppliers should also involve analysis of the risks that arise within tax administrations. Internal risks, especially information security risks, may affect the effectiveness of the measures implemented by tax administrations to apply VAT to international transactions.</li> <li>The OECD Forum on Tax Administration (FTA) has developed an Enterprise Risk Management Maturity Model (2021) that covers the organisation and operational aspects of enterprise risk management, allowing tax administrations to self-assess their current level of maturity in this area, among other objectives.</li> </ul>   | - | ☑ | ☑ | - | <p><b>Subsection 5.3</b><br/>page 299</p>   |
| <p><b>Implementation and operation of a simplified compliance regime</b></p> <ul style="list-style-type: none"> <li>Prior to a regime's effective date of implementation, the main internal risks involve tax administrations' design and implementation of the registration and compliance portal and supporting infrastructure.</li> <li>During the operational phase, tax administrations should consider the enlistment of dedicated relationship managers to ensure that any issue in particular with larger foreign taxpayers can be resolved quickly.</li> <li>A governance and legal framework is required in order to ensure the integrity of systems and appropriate use of the information accessed by tax administrations.</li> <li>Tax administrations are advised to establish information security management systems to ensure the protection of relevant data.</li> </ul> | ☑ | ☑ | ☑ | ☑ | <p><b>Subsection 5.3.1</b><br/>page 301</p> <p><b>Subsection 5.3.2</b><br/>page 301</p> |
| <p><b>ADDRESSING NON-COMPLIANCE</b></p>  |   |   |   |   |   |
| <p><b>Enforcement and related measures</b></p> <ul style="list-style-type: none"> <li>Appropriate simplification is particularly important to facilitate compliance for businesses faced with obligations in multiple jurisdictions. Despite the efforts of tax administrations to facilitate compliance by non-resident taxpayers, non-compliant conduct can nevertheless occur.</li> <li>To discourage such non-compliance by non-resident taxpayers, appropriate enforcement measures should be adopted and implemented. These include:</li> </ul>  | ☑ | ☑ | - | ☑ | <p><b>Subsection 5.6</b><br/>page 309</p>   |

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| <ul style="list-style-type: none"> <li>– Interest penalties: The primary objective of interest penalties is to protect the present value of tax revenues by compensating the government for the deprivation of use of tax amounts that are not paid on time.</li> </ul>  | ☑ | ☑ | ☑ | - | <p><b>Subsection 5.6.1</b><br/>page 311</p>  |
| <ul style="list-style-type: none"> <li>– Administrative penalties: These penalties are often intended to achieve greater compliance by deterring certain undesirable behaviours.</li> </ul>  | ☑ | ☑ | - | - | <p><b>Subsection 5.6.2</b><br/>page 312</p>  |
| <ul style="list-style-type: none"> <li>– Criminal prosecution: Some taxpayers may persevere in being non-compliant and use any means to evade their tax obligations. It is in respect of those taxpayers, for whom support and monitoring does not improve compliance, that criminal law may play an important role.<br/>International co-operation may be crucial for the practical application of criminal judgements and sanctions.</li> </ul>  | ☑ | ☑ | - | - | <p><b>Subsection 5.6.3</b><br/>page 312<br/><b>Annex I.2</b><br/>page 409</p>  |
| <ul style="list-style-type: none"> <li>– Role of payment intermediaries: OECD guidance does not recommend the application of a financial intermediary withholding regime as a jurisdiction's primary approach to collecting VAT for non-resident suppliers. Nevertheless, if treatment strategies undertaken by the tax administration are unsuccessful in engaging non-resident suppliers in the VAT collection process, it may be reasonable for tax authorities to seek to enforce the collection of the tax by requiring financial intermediaries to withhold and account for the VAT due on transactions made by specific non-compliant suppliers.</li> </ul>   | ☑ | ☑ | - | - | <p><b>Subsection 5.6.4 (i)</b><br/>page 314<br/><b>Subsection 4.A.1.A</b><br/>page 154<br/><b>Annex B</b><br/>page 375</p> |
| <ul style="list-style-type: none"> <li>– Additional measures.</li> </ul>   | ☑ | ☑ | - | - | <p><b>Subsection 5.6.5</b><br/>page 316</p>  |
| <p><b>The role of international administrative co-operation in enhancing enforcement</b></p> <ul style="list-style-type: none"> <li>• Jurisdictions should take appropriate steps to make optimal use of existing OECD instruments and other multilateral and bilateral legal instruments for international administrative co-operation to support the effective collection of VAT in international trade.</li> <li>• The use of international administrative co-operation tools in tax matters generally requires the existence of a legal basis upon which the requesting jurisdiction can engage the requested jurisdiction. These include multilateral conventions, bilateral tax conventions, regional frameworks and tax information exchange agreements (TIEAs).</li> </ul> | ☑ | ☑ | - | - | <p><b>Subsection 5.7.1</b><br/>page 318<br/><b>Annex I.1</b><br/>page 409</p>  |

| <b>Multilateral Convention on Mutual Administrative Assistance in Tax Matters</b>   |   |   |   |   |                                     |
|---|---|---|---|---|-------------------------------------|
| <ul style="list-style-type: none"> <li>• The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (“MAAC”) is the most comprehensive multilateral instrument available for all forms of tax co-operation to address tax evasion and avoidance. It provides for all possible forms of administrative co-operation between jurisdictions in the assessment and collection of taxes, and specifically: <ul style="list-style-type: none"> <li>– Exchange of information, including on request, automatic and spontaneous exchange of information</li> <li>– Simultaneous tax examinations</li> <li>– Tax examinations abroad</li> <li>– Assistance in recovery of tax</li> <li>– Service of documents</li> </ul> </li> <li>• The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes has produced a Toolkit for Becoming a Party to the MAAC. This Toolkit provides detailed guidance for States preparing to join the MAAC.</li> </ul> | ☑ | ☑ | - | - | <b>Subsection 5.7.3</b><br>page 322 |
| <ul style="list-style-type: none"> <li>• The MAAC acknowledges that, at the time of signing, a State may not, for practical, constitutional or political reasons, be able to provide other States the full assistance envisaged by the Convention. Article 30 enables a State to sign the MAAC with reservations about the type of tax to be covered and/or the type of assistance to be provided.</li> </ul>   | ☑ | - | - | - | <b>Annex I.1.1</b><br>page 409      |

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# Annex A. The international VAT/GST Guidelines – An overview of the main components

The OECD’s International VAT/GST Guidelines (“The Guidelines”) were incorporated as an OECD legal instrument in the Recommendation on the Application of Value Added Tax/Goods and Services Tax to the International Trade in Services and Intangibles, which was adopted by the Council of the OECD on 27 September 2016 (OECD, 2017<sup>[1]</sup>). They are the culmination of nearly two decades of efforts to provide internationally accepted standards for consumption taxation of international cross-border trade, particularly trade in services and intangibles.

The Guidelines set forth a number of principles for the VAT treatment of the most common types of international transactions, focusing on trade in services and intangibles. They aim to reduce the uncertainty of the risks of double taxation and unintended non-taxation that result from inconsistencies in the application of VAT in a cross-border context. The Guidelines do not aim at detailed prescription for national legislation. They seek to identify objectives and suggest means for achieving them in an effort to assist policy makers in their efforts to develop a legal and administrative framework for implementing VAT in their jurisdiction, taking into account their particular circumstances.

After summarising the core features of VATs in Chapter 1 and articulating the principles of neutrality that should govern the application of VAT to cross-border trade in Chapter 2, the Guidelines provide detailed guidance regarding the appropriate rules for determining the place of taxation for cross-border supplies of services and intangibles in Chapter 3. The Guidelines also provide guidance to facilitate interaction between national VAT systems with recommendations addressed to mutual co-operation, dispute minimisation, and application in cases of evasion and avoidance in Chapter 4.

This Annex provides a summary overview of the main components of the Guidelines.

## Chapter 1 of the Guidelines – Core features of VATs

### *Overarching purpose of a VAT: A broad-based tax on final consumption*

The overarching purpose of a VAT is to impose a broad-based tax on consumption, which is understood to mean final consumption by households. In principle, only private individuals, as distinguished from businesses, engage in the consumption at which a VAT is targeted. A necessary consequence of the fundamental proposition that a VAT is a tax on final consumption by households is that the burden of the VAT should not rest on businesses, except where explicitly provided for in legislation.

### *The central design feature of a VAT: Staged collection process*

The central design feature of a VAT is that the tax is collected through a staged process (fractionated payment). Each business in the supply chain takes part in the process of controlling and collecting the tax, remitting the proportion of tax corresponding to its margin, i.e. the difference between the VAT imposed on its taxed inputs and the VAT imposed on its taxed outputs. Thus, the tax is in principle collected on the “value added” at each stage of production and distribution. In this respect, the VAT differs from a retail

sales tax (“RST”), which taxes consumption through a single-stage levy imposed in theory only at the point of final sale. In contrast to an RST, the risk associated with the non-payment of the VAT is spread across the commercial chain rather than resting on the final sale.

This central design feature of the VAT, coupled with the fundamental principle that the burden of the tax should not rest on businesses, requires a mechanism for relieving businesses of the burden of the VAT they pay when they acquire goods, services, or intangibles. The invoice-credit method is the approach adopted by almost all jurisdictions for implementing the staged collection process while relieving businesses of the final VAT burden. Under the invoice-credit method, each trader charges VAT at the rate specified for each supply and passes to the purchaser an invoice showing the amount of tax charged. The business purchaser is in turn able to credit that input tax against the output tax charged on its sales, remitting the balance to the tax authorities and receiving refunds when there are excess credits.

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

### ***VAT and international trade: The destination principle***

The overarching purpose of VAT as a levy on final consumption, coupled with its central design feature of a staged collection process, lays the foundation for the core VAT principles bearing on international trade. The fundamental issue of economic policy in relation to the international application of VAT is whether the levy should be imposed by the jurisdiction of origin or destination. Under the destination principle, tax is ultimately levied only on the final consumption by the jurisdiction in which that consumption takes place. Under the origin principle, the tax is levied in the various jurisdictions where the value was added. The key economic difference between the two principles is that the destination principle places all firms competing in a given jurisdiction on an even footing whereas the origin principle places consumers in different jurisdictions on an even footing.

The application of the destination principle in VAT achieves neutrality in international trade. Under the destination principle, exports are not subject to tax and businesses are entitled to a refund of input taxes (that is, exports are “free of VAT” or “zero-rated”). Conversely, the destination principle means that imports are taxed on the same basis and at the same rates as domestic supplies. Accordingly, the total tax paid in relation to a supply is determined by the rules applicable in the jurisdiction of its consumption and all revenue accrues to the jurisdiction where the supply to the final consumer occurs.

By contrast, under the origin principle each jurisdiction would levy VAT on the value created within its own borders. Under an origin-based regime, exporting jurisdictions would tax exports on the same basis and at the same rate as domestic supplies, while importing jurisdictions would give a credit against their own VAT for the hypothetical tax that would have been paid at the importing jurisdiction’s own rate. Tax paid on a supply would then reflect the pattern of its origins and the aggregate revenue would be distributed in that pattern. This would run counter to the core features of a VAT: as a tax on consumption, the revenue should accrue to the jurisdiction where the final consumption takes place. Under the origin principle, these revenues are shared amongst jurisdictions where value is added, and could influence the economic or geographical structure of the value chain and undermine neutrality in international trade.

For these reasons, there is widespread consensus that the destination principle, with revenue accruing to the country of import where final consumption occurs, is preferable to the origin principle from both a

theoretical and practical standpoint. In fact, the destination principle is the international norm and is sanctioned by World Trade Organisation (“WTO”) rules.<sup>150</sup>

Because of the widespread acceptance of the destination principle for applying VAT to international trade, most of the rules currently in force are generally intended to tax supplies of goods, services and intangibles within the jurisdiction where consumption takes place. Practical means of implementing this intention are, nevertheless, diverse across jurisdictions, which can in some instances lead to double taxation or unintended non-taxation, and to uncertainties for both businesses and tax administrations.

Implementation of the destination principle with respect to international trade in goods is relatively straightforward in theory and in principle generally effective in practice, due in large part to the existence of border controls or fiscal frontiers.<sup>151</sup> When a transaction involves goods being moved from one jurisdiction to another, the goods are generally taxed where they are delivered. The exported goods are free of VAT in the seller’s jurisdiction (and are freed of any residual VAT by successive businesses’ deductions of input tax), whilst imports are subject to the same VAT as equivalent domestic goods in the purchaser’s jurisdiction. The VAT on imports is generally collected at the same time as customs duties, although in some jurisdictions collection is postponed until declared on the importer’s next VAT return. Allowing deduction of the VAT incurred at importation in the same way as input tax deduction on a domestic supply ensures neutrality and limits distortions in relation to international trade.

Implementing the destination principle for international trade in services and intangibles creates additional complexities compared to international trade in goods. The nature of services and intangibles is such that they cannot be subject to border controls in the same way as goods. For these reasons, the OECD developed the Guidelines for determining the jurisdiction of taxation for international supplies of services and intangibles, doing so in a way that reflects the destination principle.

Making exports free of VAT and taxing imports introduce a breach in the staged collection process. In many VAT systems that operate an invoice-credit method, the VAT on cross-border B2B supplies of services and intangibles is collected by the “reverse charge mechanism”, under which the liability to pay the tax is switched from the supplier to the customer. Note for these purposes that OECD guidance generally assumes that B2B supplies are supplies where both the supplier and the customer are recognised as businesses in national law and B2C supplies are assumed to be supplies where the customer is not recognised as a business in national law. In the absence of a reverse charge mechanism for international B2B supplies of services, non-resident suppliers that deliver services in jurisdictions where they are not established would in principle have to register for VAT purposes and fulfil all VAT obligations in these jurisdictions. To avoid such administrative burdens on non-resident suppliers, and to assure that VAT is accounted for, the reverse charge mechanism allows or requires the VAT-registered customer to account for the tax on supplies received from non-resident suppliers. The reverse charge mechanism is not applied in all jurisdictions and, where it is implemented, the rules may differ from country to country.

### ***Application of generally accepted principles of tax policy to VAT: The Ottawa Taxation Framework Conditions***

The Guidelines reiterate the tax policy principles articulated in the *Ottawa Taxation Framework Conditions* (see subsection 1.7. in Section 1) that should govern VAT design, namely: neutrality, efficiency, certainty

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<sup>150</sup> Footnote 1 of the WTO’s *Agreement on Subsidies and Countervailing Measures* provides that “... the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy”.

<sup>151</sup> As noted throughout this Toolkit, however, there are significant challenges associated with the imposition of VAT on imports of B2C supplies of low-value goods.

and simplicity, effectiveness and fairness, and flexibility. Because of the special significance of neutrality as a core principle of VAT design, the Guidelines devote an entire chapter to the neutrality principle.

## Chapter 2 of the Guidelines – Neutrality of VAT in the context of cross-border trade

With respect to the “basic neutrality principles”, i.e. principles related to the basic design features of a VAT *without* regard to international trade, the Guidelines set forth three core principles:

- **Guideline 2.1** provides that “[t]he burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation”.

This Guideline sets forth the fundamental principle that a VAT is a tax on final household consumption and that the burden of this tax should thus not rest on businesses. However, Guideline 2.1 also recognises jurisdictions’ right to deviate from this principle, at least when they explicitly do so by legislation. This may, for instance, concern services that are exempt due to difficulties to assess the tax base (e.g. many financial services) or services exempt for other policy reasons (such as health care, education, and culture). Providing an exemption for the final supply to the consumer does not necessarily fully relieve the consumer of the economic burden of the VAT if the transactions in the preceding stages of the economic process are not also relieved of the tax burden.

The other two “basic” VAT neutrality principles do not recognise any exceptions:

- **Guideline 2.2** provides that “[b]usinesses in similar situations carrying out similar transactions should be subject to similar levels of taxation”.
- **Guideline 2.3** provides that “VAT rules should be framed in such a way that they are not the primary influence on business decisions”.
- The Guidelines provide useful Commentary (supported by examples) on what is meant by “similar levels of taxation”, “businesses in similar situations”, “similar transactions”, and “primary influence on business decisions”. Readers can consult this commentary in paragraphs 2.39 to 2.52 of the Guidelines.

Three specific Guidelines are addressed to VAT neutrality in international trade. Like the “basic” neutrality Guidelines, the neutrality Guidelines addressed to international trade articulate uncontroversial principles at a high level of generality:

- **Guideline 2.4**, which is addressed to the “level of taxation”, provides that “foreign businesses should not be disadvantaged or advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid”.
- **Guideline 2.5** recognises that “jurisdictions may choose from a number of approaches” in order “[t]o ensure foreign businesses do not incur irrecoverable VAT”.

Guideline 2.4 essentially sets forth the principle of equal treatment between domestic and foreign businesses in respect of the level of taxation in the taxing jurisdiction. Where domestic businesses do not incur irrecoverable VAT, this should also apply for foreign businesses. Guideline 2.5 makes it clear that there is a variety of approaches for achieving this objective with respect to foreign businesses, even though these may not be the same as those used for achieving this objective with respect to domestic businesses. The Commentary elaborates on this point, observing that the approaches for relieving foreign businesses of irrecoverable VAT may include specific input VAT refund regimes; refunds through local VAT registration; shifting the responsibility to locally registered suppliers/customers (“reverse charge”); and granting purchase exemption certificates.

- **Guideline 2.6**, while acknowledging that foreign businesses may legitimately be subject to different administrative requirements than those applied to domestic businesses, declares that in such cases these requirements “should not create a disproportionate or inappropriate compliance burden for the businesses”.

### Chapter 3. Determining the place of taxation for cross-border supplies of services and intangibles

The recommended rules and principles for determining the place of taxation for international cross-border supplies of services and intangibles are covered in detail in the body of the Toolkit, in particular in the Sections 3A and 3B.

This overview is therefore limited to an outline of the main standards and recommendations included in Chapter 3.

- **Guideline 3.1:** For consumption tax purposes, internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption.
- **Guideline 3.2:** For the application of Guideline 3.1, for business-to-business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles.
- **Guideline 3.3:** For the application of Guideline 3.2, the identity of the customer is normally determined by reference to the business agreement.
- Business agreements consist of the elements that identify the parties to a supply and the rights and obligations with respect to that supply. They are generally based on mutual understanding.
- **Guideline 3.4:** For the application of Guideline 3.2, when the customer has establishments in more than one jurisdiction, the taxing rights accrue to the jurisdiction(s) where the establishment(s) using the service or intangible is (are) located.
  - The following broad categories of approaches can be distinguished:
    - Direct use approach, which focuses directly on the establishment that uses the service or intangible.
    - Direct delivery approach, which focuses on the establishment to which the service or intangible is delivered.
    - Recharge method, which focuses on the establishment that uses the service or intangible as determined on the basis of internal recharge arrangements within the MLE, made in accordance with corporate tax, accounting or other regulatory requirements.
- **Guideline 3.5:** For the application of Guideline 3.1, the jurisdiction in which the supply is physically performed has the taxing rights over business-to-consumer supplies of services and intangibles that:
  - are physically performed at a readily identifiable place, and
  - are ordinarily consumed at the same time as and at the same place where they are physically performed, and
  - ordinarily require the physical presence of the person performing the supply and the person consuming the service or intangible at the same time and place where the supply of such a service or intangible is physically performed.
- **Guideline 3.6:** For the application of Guideline 3.1, the jurisdiction in which the customer has its usual residence has the taxing rights over business-to-consumer supplies of services and intangibles other than those covered by Guideline 3.5.

- **Guideline 3.7:** The taxing rights over internationally traded services or intangibles supplied between businesses may be allocated by reference to a proxy other than the customer's location as laid down in Guideline 3.2, when both the following conditions are met:
  - The allocation of taxing rights by reference to the customer's location does not lead to an appropriate result when considered under the following criteria:
    - Neutrality
    - Efficiency of compliance and administration
    - Certainty and simplicity
    - Effectiveness
    - Fairness
  - A proxy other than the customer's location would lead to a significantly better result when considered under the same criteria.

Similarly, the taxing rights over internationally traded business-to-consumer supplies of services or intangibles may be allocated by reference to a proxy other than the place of performance as laid down in Guideline 3.5 and the usual residence of the customer as laid down in Guideline 3.6, when both the conditions are met as set out in a. and b. above.

- **Guideline 3.8:** For internationally traded supplies of services and intangibles directly connected with immovable property, the taxing rights may be allocated to the jurisdiction where the immovable property is located.

## Chapter 4. Mechanisms to support the Guidelines in practice

The Guidelines recognise that there may be differences in the way jurisdictions implement or interpret the neutrality or place of taxation principles. This may lead to double taxation, unintended non-taxation or disputes. Mechanisms for mutual co-operation, exchange of information and other forms of communication among tax administrations can offer helpful instruments to facilitate a consistent interpretation of the Guidelines, to minimise disputes, and to address issues of evasion or avoidance arising in the context of the Guidelines. While formal dispute resolution mechanisms do not exist in the absence of a binding legal basis (e.g. tax treaty), the Guidelines nevertheless encourage jurisdictions to utilise existing administrative co-operation mechanisms to support their consistent implementation and to deal with disputes when they may arise.

The Guidelines identify the following existing mechanisms for mutual co-operation, exchange of information, and other forms of mutual assistance that may aid tax administrations in interpreting and implementing the principles of the Guidelines in a consistent manner.

- The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (OECD/Council of Europe, 2011<sup>[89]</sup>). The Convention was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. It provides for all forms of administrative co-operation between the parties in the assessment and collection of taxes, focusing in particular on combatting tax evasion and avoidance. The Convention is intended to have a very wide scope, covering all taxes including general consumption taxes such as VAT.
- The OECD Model Tax Convention (MTC) (Article 26) (OECD, 2017<sup>[96]</sup>). Note that the MTC is not a binding instrument, unless and until ratified as a bilateral tax treaty between two jurisdictions (often in a form slightly different from the model). Article 26 of the MTC deals with exchange of information. It applies to “such information as is foreseeably relevant ... to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States” (emphasis supplied), including VAT. For jurisdictions that have adopted bilateral tax treaties based on the MTC model, including Article 26, the mechanism

appears to offer a promising platform for Parties to exchange information both in individual cases and in broader classes of cases arising under VAT. This includes cases that raise issues implicating the Guidelines.

- The Model Agreement on Exchange of Information on Tax Matters (Model Agreement) (OECD, 2002<sup>[99]</sup>). The OECD developed the Model Agreement to promote international co-operation in tax matters through exchange of information. The Model Agreement is not a binding instrument but contains two models for Tax Information Exchange Agreements (TIEAs), a multilateral version and a bilateral version. A considerable number of bilateral agreements have been based on the Model Agreement. These TIEAs provide for exchange of information on request and for tax authorities to conduct certain tax examinations in foreign jurisdictions, principally for direct taxes but they can also cover other taxes such as VAT. In addition, TIEAs provide for forms of exchange other than exchange on request.

Beyond the use of existing mechanisms for mutual co-operation and exchange of information, the Guidelines encourage jurisdictions to support their consistent implementation and interpretation through taxpayer services focused on the Guidelines. The Guidelines provide the following non-exclusive list of possible taxpayer services:

- The provision of readily accessible and easily understood local guidance on the domestic VAT rules that fall within the scope of the Guidelines.
- The creation of points of contact with taxing authorities where businesses and consumers can make inquiries regarding the domestic VAT rules within the scope of the Guidelines and receive timely responses to such inquiries.
- The creation of a point of contact with tax authorities where businesses can identify perceived disparities in the interpretation or implementation of the principles of the Guidelines.

Finally, the Guidelines make it clear that they are drafted on the assumption that all parties are acting in good faith and that all the transactions are legitimate and have economic substance. Accordingly, when this is not the case, i.e. in cases involving evasion or avoidance, nothing in the Guidelines may be read as preventing jurisdictions from taking proportionate measures to protect against evasion and avoidance, revenue losses and distortion of competition.

# Annex B. Financial intermediary-based VAT withholding regimes – Challenges to utilising in international trade but potentially useful fallback option

## Background

VAT withholding schemes are fairly common in Latin America and the Caribbean, and indeed also in many other jurisdictions around the world. The objective of these schemes is to ensure VAT collection at points in the production chain where there is greater informality and/or in sectors where there are high levels of evasion. To achieve this objective, tax authorities designate agents to withhold the VAT due on taxable supplies by domestic suppliers and remit it to the tax authorities. This can be considered as an advance payment of the suppliers' VAT obligation, which may correspond to all (or just a portion) of the VAT due on the supplies in question (depending on the VAT withholding rate).

Tax authorities typically designate financial intermediaries, such as banks, credit card companies and other payment service providers ("PSPs" such for instance providers of online payment solutions), as withholding agents.

While withholding schemes can create challenges for VAT compliance and administration, their introduction can also reduce the incentives to evade VAT and can operate as an effective tool to collect VAT revenues from economic operators particularly in jurisdictions with large informal sectors.

It is beyond the scope of the Toolkit to analyse and comment on the operation of VAT withholding schemes in a domestic context. This Toolkit is aimed at supporting Latin American and Caribbean tax authorities in designing and implementing solutions for the effective collection of VAT on internationally traded services, intangibles and goods, particularly where VAT must be collected from businesses that are not resident in the jurisdiction of taxation or do not have any other physical presence there. These solutions focus primarily on the collection of VAT on supplies to private consumers (B2C), which creates most revenue risks and challenges for tax authorities.

Research and experience show that withholding schemes face considerable challenges that make them less suitable as primary tool for the effective collection of VAT in such an international cross-border context. This Toolkit therefore recommends the implementation of a regime for the collection of VAT from non-resident suppliers, potentially in combination with a full liability regime for digital platforms. Such a regime requires these suppliers and platforms to register in the jurisdiction of taxation and remit the tax to the tax authorities in that jurisdiction. It recommends the operation of a simple or simplified, ideally web-based, registration and collection regime that facilitates compliance for these non-resident suppliers and digital platforms. It builds on the growing body of experience from jurisdictions that have successfully implemented such simplified compliance regimes, including jurisdictions that operate a VAT withholding scheme in the domestic context.

This Toolkit, however, recognizes withholding schemes as a possible fallback option under a simplified compliance regime to discourage non-compliance by non-resident suppliers (including online marketplaces and other digital platforms). Section 5 of the Toolkit provides an in-depth analysis of the implementation of a withholding role for financial intermediaries as an enforcement tool to address non-compliance.

This Annex sets out the main challenges that withholding regimes face in securing the collection of VAT in an international context, particularly in respect of supplies made by non-resident businesses. Section 4 of the Toolkit, in subsections 4A.1.4. and 4B.1.3., supplements this analysis with reflections on the administrative and operational challenges of financial intermediary-based VAT withholding regimes.

## The operation of a VAT withholding scheme in an international context – Overview of main challenges

One of the main VAT challenges arising from the growth of digital trade is to secure collection of the VAT on the growing volume of purchases made online by private consumers from non-resident online suppliers e.g. online marketplaces. Most of these online purchases are paid for by means of credit cards or other formal/regulated web-based payment solutions. It may therefore appear attractive to designate banks, credit card companies, payment services providers and other financial intermediaries as withholding agents for the VAT due on these online sales. Under such a solution, jurisdictions typically require a consumer's financial institution to withhold an amount as a proxy for VAT due on any payments that the consumer makes for purchases from non-resident suppliers. The financial institution then remits the designated VAT amount to a government bank account rather than passing the gross payment for the sale in full to the supplier. This may have the apparent attraction of giving governments a seemingly effective enforcement tool as the consumer will usually hold its main payment accounts with financial institutions based in its country of residence.

Several challenges with such VAT withholding schemes, however, have been identified. The principal challenges are:

- A critical lack of VAT-relevant information available to financial intermediaries acting as withholding agents, resulting in considerable risks of under-taxation and/or over-taxation and high administrative and compliance complexity
- The difficulty of correcting mistakes, particularly where these lead to VAT refund claims
- Risks of evasion or avoidance

### *Critical lack of VAT-relevant data*

Financial intermediaries such as banks and payment service providers generally have only limited access to information regarding the underlying transactions for which they facilitate payments. In practice, the only information that a financial intermediary will generally have about a transaction is the amount of funds that the consumer transfers to make a payment and the identifying markers of the bank account to which the consumer makes the payment.

This information will often be largely inadequate to determine whether a payment relates to a transaction that is subject to VAT in the jurisdiction from where it originates, let alone to make a correct determination of the VAT liability where the payment is made as consideration for a transaction that is subject to VAT. Among other items, a withholding agent will need to know the following:

- Whether the payment is made as consideration for a transaction (supply of services, intangibles, goods) that may be subject to VAT.

- When the payment is made as consideration for a supply that is subject to VAT, the nature of the goods, services or intangibles for which the payment is made, as well as
- The VAT status of the payment recipient (taxable business or private individual), and
- The location and VAT status of the person making the payment (resident or not; business or private individual).

These elements are critical for determining:

- Whether the payment relates to a supply that is subject to a VAT-withholding obligation, which includes determining the taxable business status of the supplier and determining the place of taxation of the underlying supply.
- The amount of VAT to be withheld, which requires knowing the applicable rate (standard rate or reduced rate) and the possible application of exemptions or other specific/preferential regimes. This is particularly challenging for payments relating to complex supplies involving a mix of goods and services that may be subject to different rates and treatments.

The payment infrastructure that banks and other financial intermediaries use for executing international payments does not generally permit routine inclusion of the type of detailed transactional information that is required to make these tax determinations, such as the character of an underlying supply or the identities of the counterparties to the supply. Indeed, this is the case even for purely domestic transactions in jurisdictions with advanced financial services infrastructure, and it is even less plausible to envisage transmission of such data for international payments in the short-to-medium term.

Most financial intermediaries will consider a payment as valid if the person making the payment provides them with bank account identifiers (“IBAN” or “SWIFT” code) for the recipient of the payment, which the financial intermediaries are able to verify. Some financial intermediaries will request individual identifying details of the payment recipient such as name and address, but, as a practical matter, most banks and other financial intermediaries do not configure their systems to validate these details. Similarly, most jurisdictions do not impose regulatory obligations on financial services businesses to verify the identities of payment recipients, as distinct from the due diligence they must perform on their own customers.

Even if financial intermediaries had all transactional information at their disposal, they would need a strong grasp of VAT rules and their nuances to withhold correctly and to develop automated systems to apply that analysis to the often-enormous volumes of international payments they execute on a daily basis.

The complexity for financial intermediaries of determining the correct VAT treatment of payments that may be subject to a withholding obligation creates considerable risks of both under-taxation and of over-taxation or double taxation, with the potential effect of inadvertently infringing the taxing rights of other jurisdictions. This could, for instance, be the case where a consumer uses a bank card with a financial institution in its own jurisdiction to pay for purchases that are not subject to VAT in that jurisdiction, e.g. a hotel booking in a foreign country through the supplier’s website or via a digital platform. Or the consumer may purchase goods for delivery, perhaps as a gift, to someone resident in another jurisdiction. Undue taxation may also occur when payments are made between private individuals in relation to transactions that are outside the scope of VAT (consumer-to-consumer, C2C transactions).

Further administrative complexity and compliance costs are likely to arise where withholding agents are not able to distinguish between payments made by taxable businesses and private individuals and where VAT is thus withheld on payments made by both businesses and individuals. This is likely to create considerable complexity for domestic businesses in the absence of a clear and transparent mechanism for them to determine whether VAT has indeed been withheld (and whether they may have a reverse charge obligation) and, if so, to support their claims for the deduction of input VAT that has been withheld by the financial intermediary.

In short, the critical lack of information for financial intermediaries makes it enormously challenging, if not impossible, for these intermediaries to make a correct VAT determination under a VAT withholding regime for international digital trade. This is likely to cause under-, over-, and double taxation, create undue compliance burdens and administrative costs, including for tax authorities that may frequently have to make administratively burdensome corrections and refunds to consumers and businesses. Consequently, it risks becoming a barrier to international commerce.

### *Difficulties in making corrections, including in processing refunds*

The processing of VAT refunds following restitution by the supplier of amounts paid by consumers due to corrections, cancellations of purchase orders or returned items creates significant challenges when the VAT was withheld by a financial intermediary under a withholding obligation. Because the supplier never actually received the portion of the proceeds relating to VAT, it may object to having to issue refunds to consumers that include the VAT. Financial intermediaries that withhold or charge the VAT in their role as withholding agents may experience significant challenges in identifying and verifying the validity of requests they receive from consumers and suppliers to process VAT refunds. The tax administration may be faced with the difficult challenge of verifying the considerable volumes of requests for refunds of VAT that may have been remitted by financial intermediaries as withholding agents but that the administration may not be able to reconcile with the refund requests from domestic businesses. These requests for VAT corrections or refunds are likely to be significant particularly in respect of online sales, where consumers often return purchased items to the suppliers.

### *Risks of evasion and avoidance*

VAT withholding schemes relying on financial intermediaries as withholding agents risk incentivising consumers to explore alternative payment and delivery services that enable them to avoid VAT. A consumer will often have relatively easy access to a bank card or to a payment mechanism that is administered by a non-resident financial institution or to one of the increasing numbers of alternative online payment solutions that is outside the scope of the withholding scheme. By using a payment mechanism outside the scope or enforcement power of its jurisdictions' financial intermediary withholding regime, a consumer will potentially be able to evade payment of VAT on supplies it purchases from non-resident suppliers. This may lead to considerable revenue leakage and potential competitive distortion.

Vouchers are among the alternative payment methods that may often be used in an online sales environment. A voucher is an instrument that gives consumers access to goods or services under defined conditions. Businesses increasingly offer them to consumers in both online retail and traditional commerce. Financial intermediaries normally do not intervene in a payment that is made by means of a voucher. As with other types of alternative payment methods, tax authorities will confront practical difficulties in connection with VAT collection on purchases through vouchers, with respect to which neither they nor financial intermediaries have meaningful information or control.

## **Can a withholding scheme be simplified to address the challenges in an international context?**

Some LAC jurisdictions, as well as other jurisdictions around the world, have already taken steps to introduce VAT collection through withholding by financial intermediaries in respect of international transactions. These are typically targeted at online retail (B2C) sales made by non-resident online sellers. These regimes have typically sought to overcome the different challenges for financial intermediaries in making correct taxing decisions through a relatively simple but blunt mechanism for deciding whether to withhold VAT on a consumer payment. This involves the tax authorities producing a list of non-resident suppliers that make sales to consumers in their jurisdiction. The tax authorities then mandate that financial

intermediaries withhold a specific percentage on consumer payments to businesses on the list as a proxy for VAT. The financial intermediaries will then send the amount they withhold directly to the tax authorities.<sup>152</sup> The percentage would generally be the standard VAT rate in the jurisdiction of withholding. In most instances, jurisdictions aim to restrict these lists to non-resident suppliers of services, principally 'digital' services. There are few if any examples of jurisdictions seeking to undertake a similar exercise for VAT withholding on international supplies of goods.

Major challenges with the approach of maintaining an in-scope list of non-resident suppliers relate to ensuring it is sufficiently comprehensive and up-to-date and to guarding against inadvertent over-taxation or double taxation of different transactions. First, although listings of in-scope non-resident suppliers will contain many household names and recognised providers of remote international B2C supplies, it is almost impossible for tax authorities to ensure that the listing remains sufficiently comprehensive and up-to-date at all times. In any event, jurisdictions must dedicate resources to ensuring they update such lists at regular intervals. Risks of double taxation and over-taxation will occur in relation to suppliers that appear on the in-scope list but that also make supplies that fall outside the scope of the jurisdiction's VAT withholding regime, e.g., if the regime targets only services but a supplier also supplies large volumes of imported goods to consumers. Suppliers that make reduced- and zero-rated supplies face similar risks because financial intermediaries will withhold VAT at a single rate, usually the standard rate.

This list-based approach to financial intermediary VAT withholding may create significant administrative burden and unintentional operational costs due to the volume of requests for refunds that suppliers, platforms and consumers make as a consequence of over- and double taxation. Suppliers and platforms, for their respective parts could experience high levels of administrative inefficiency because financial intermediaries are unable to achieve the correct taxing result through withholding. This would be not least due to the burden and cash-flow impacts of the obligation to make frequent refund applications to recover funds that financial intermediaries incorrectly withheld. Such experiences could in turn have a longer-term detrimental effect on jurisdictions' ability to attract business investment in their markets and on their international trade relationships.

## Conclusions on financial intermediary withholding in an international context

The objectives of reforming the collection of VAT on supplies that non-resident suppliers make into a jurisdiction are to generate revenue and safeguard tax neutrality. Jurisdictions should pursue these objectives through policies that are as efficient and proportionate as possible for all parties concerned. As this discussion outlines, financial intermediary-based VAT withholding mechanisms have flaws that make it challenging to raise significant revenues in a way that achieves accurate taxing results and respects principles of tax neutrality and proportionate administrative burdens on businesses.

This Toolkit therefore does not recommend that jurisdictions adopt financial intermediary withholding as their primary mechanism for VAT collection on international B2C supplies.

However, jurisdictions could consider the use of financial intermediary withholding as an ultimate fallback option to address pervasive non-compliance by non-resident suppliers and digital platforms. Section 5 of the Toolkit explores enforcement tools for tackling non-compliance in depth, including a fallback withholding role for financial intermediaries.

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<sup>152</sup> In some instances, rather than financial intermediaries withholding a part of the remittance to cover VAT, the purchaser faces a supplementary charge.

## Annex C. Leveraging the model rules for reporting by platform operators with respect to sellers in the sharing and gig economy for VAT compliance purposes

The OECD Model Reporting Rules (OECD, 2020<sup>[54]</sup>) were adopted by the OECD/G20 Inclusive Framework on BEPS in 2020 to assist jurisdictions in implementing a requirement for digital platforms to collect information on the income realised by sharing/gig economy sellers that offer accommodation, transport and personal services and to report the information to tax authorities. One of the core objectives of these model rules is to promote international co-operation to ensure that tax administrations have access to information on income earned by sharing/gig economy sellers within their jurisdictions, including from platforms that are located in other jurisdictions. To achieve this objective, the rules provide that platform operators report information to the tax authorities of their jurisdiction of residence and that this information is exchanged automatically and annually by the platform operator's residence jurisdiction with the jurisdictions of the sellers' residence – and, with respect to transactions involving the rental of immovable property, the jurisdictions in which such immovable property is located.

The OECD Model Reporting Rules promote standardisation of reporting rules between jurisdictions in order to help platforms comply with reporting obligations across different jurisdictions, by allowing them to follow largely similar processes for gathering and reporting information on the transactions and identity of the platform sellers.

The OECD Model Reporting Rules have been designed primarily to facilitate and enhance compliance by sharing/gig economy providers with their direct tax obligations. They recognise explicitly, however, that the information reported and exchanged under these rules is likely to be relevant for VAT compliance purposes as well. The information reported under the OECD Model Reporting Rules will include the consideration received by sharing/gig economy providers, the types/number of services provided and the underlying provider's tax identification data. This information is likely to be relevant for VAT compliance purposes in the jurisdiction receiving the information under the Model Reporting Rules. Depending on the type of services and the applicable rules for determining their VAT place of taxation, the tax authorities may benefit from the information received under the Model Reporting Rules for VAT compliance purposes as follows:

- In general, tax authorities in the jurisdiction where a sharing/gig economy provider is established, will be able to use the information received under the Model Reporting Rules to verify this provider's compliance with its VAT registration obligation (and associated obligations such as reporting, application of simplification regimes, etc.).
- Where a tax authority receives information on a sharing/gig economy provider in its jurisdiction in respect of supplies that are subject to VAT in this jurisdiction, the tax administration will be able to use these data to monitor and pursue compliance by this provider with all the associated VAT obligations, including the provider's obligation to register, report and remit the VAT. This will typically apply to supplies of services for which the VAT place of taxation is determined by reference to their place of performance or by reference to the location of the supplier (typically "on-the-spot" services as described in Guideline 3.5. of the *International VAT/GST Guidelines* (OECD, 2017<sup>[11]</sup>)). This is important in the sharing/gig economy context, as these will often involve such "on-the-spot" services that will be subject to VAT in the jurisdiction where the sharing/gig economy provider is established, such as local transportation and delivery services and personal services.

- Where information is received by a tax authority relating to services connected with immovable property that is located in this tax authority's jurisdiction, this tax administration will be able to use this information to monitor compliance with all the VAT obligations in respect of these services. Indeed, such services will in general be subject to VAT in the jurisdiction where the relevant immovable property is located (see Guideline 3.8. of the *International VAT/GST Guidelines*). This information will be particularly useful to monitor and pursue compliance with VAT obligations in the accommodation (short-term rental) sector of the sharing/gig economy.

It is thus clear that the information that will be exchanged under the OECD Model Reporting Rules will be of significant use for authorities to enhance VAT compliance in key sectors of the sharing/gig economy, including the sectors of transportation, personal services and accommodation. It is important that tax authorities ensure that the information exchanged under these rules is used effectively to address their VAT reporting needs at the national level as well as to support the international VAT co-operation in this context. This will notably minimise risks of uncoordinated proliferation of reporting requirements that would have an adverse impact on the efficiency and costs of tax administration and compliance for both tax administrations and economic operators.

Where the information exchanged under these Model Reporting Rules is intended to be used for purposes other than the administration of direct taxes by the receiving tax administration, jurisdictions should ensure that the information is shared and used in compliance with the relevant confidentiality and appropriate use provisions of the underlying international exchange instrument, such as Article 22 of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011<sup>[89]</sup>).

The Model Reporting Rules do not seek to dictate jurisdictions that should introduce them. They rather encourage jurisdictions that wish to introduce reporting rules aimed at the sharing/gig economy to do so in a manner that is consistent with the Model Reporting Rules. This is expected to enhance consistency of reporting regimes across jurisdictions, which will promote and facilitate international co-operation between tax administrations including to support VAT compliance in the sharing/gig economy. By supporting the international exchange of information, the Model Reporting Rules are likely to offer the most powerful tool for tax authorities to gather information on supplies and providers that are subject to VAT in their jurisdiction from non-resident sharing/gig economy platforms.

This is an important advantage that the Model Reporting Rules are likely to have over purely domestic reporting regimes for VAT purposes, as it may be challenging to enforce such reporting requirements against non-resident platform operators. On the other hand, platforms facilitating transactions in multiple jurisdictions may be confronted with a wide set of diverging domestic reporting requirements in the absence of coordination, which may lead to increased costs, potentially harmful barriers to the business development and a negative effect on compliance and data quality.

Overall, international consistency promoted by the Model Reporting Rules is thus expected to facilitate compliance, lower compliance costs and administrative burdens and improve the effectiveness of VAT systems recognising in particular that digital platforms are likely to be faced with multi-jurisdictional obligations.

Jurisdictions are thus strongly encouraged to leverage, as appropriate, the potential of the Model Reporting Rules to monitor and enhance VAT compliance in the sharing/gig economy.

These Model Reporting Rules could more generally provide the appropriate basis for a future expansion of information reporting and exchange in the area of VAT.

Source: OECD (2021), *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (OECD, 2021<sup>[6]</sup>).

## Annex D. Australian government productivity commission assessment of the costs of different models for reforming GST collection on imports of low-value goods

This Annex contains an analysis by the Australian Government Productivity Commission on the costs of different transporter-based GST collection models for imports of low-value goods in comparison to a model for simplified registration and collection for non-resident suppliers.

The Toolkit has reproduced the table exactly as it appears in the Productivity Commission's 2017 Inquiry Report on *Collection Models for GST on Low Value Imported Goods*.

In order to comprehend the information in the table, readers should note in particular the following items for the "Model" column:

- The rows with the label "Taskforce" refer to the model for GST collection that the Australian Low Value Parcel Processing Taskforce had proposed in 2012 on the basis of different possible levels for the low-value consignment relief threshold for GST at importation.
- The row with the label "MTM" means the "Modernised Import VAT Transporter Model" that Amazon had proposed in 2017 on the basis of a low-value consignment relief threshold of zero. Note that KPMG performed the study that supported this proposal at the request of Amazon.
- The row with the label "Legislated" means the regime for GST collection by non-resident suppliers at the time of supply under simplified registration and collection procedures. This is the regime that Australia had already legislated to come into force at the time of the Productivity Commission's report and is indeed the regime that Australia current operates. Under this model, Australia retained a high relief threshold for GST of AUD 1 000 (USD 688). The threshold applies to all goods other than alcohol and tobacco products. GST at import continues to apply for goods with a customs value greater than AUD 1 000.

Readers should also note that:

- All values in the table are in Australian Dollars (AUD).
- The term "LVT" means here the low-value consignment relief threshold for GST.

**Table A D.1. Australian Government Productivity Commission’s assessment of costs of different transporter-based VAT collection models for imports of low-value goods in comparison to a model for simplified registration and collection for non-resident suppliers**

**Table 5.1 Comparison of administrative and compliance costs** <sup>a,b,c</sup>  
Annual calculations are based on 2015-16 volume of items

| Model      | GST-specific LVT | Estimates of cost                   |                                     |                        |                        |                        |
|------------|------------------|-------------------------------------|-------------------------------------|------------------------|------------------------|------------------------|
|            |                  | <i>International mail (upfront)</i> | <i>International mail (ongoing)</i> | <i>Cargo (ongoing)</i> | <i>Total (upfront)</i> | <i>Total (ongoing)</i> |
|            | \$               | \$m                                 | \$m per annum                       | \$m per annum          | \$m                    | \$m per annum          |
| Taskforce  | 0                | 162                                 | 540                                 | 90–688                 | 162                    | 630–1228               |
| Taskforce  | 100              | 162                                 | 143                                 | 61–466                 | 162                    | 204–609                |
| Taskforce  | 200              | 162                                 | 72                                  | 37–287                 | 162                    | 109–359                |
| Taskforce  | 500              | 162                                 | 14                                  | 14–108                 | 162                    | 28–122                 |
| MTM        | 0                | 63                                  | 147–335                             | 90–688                 | N/A-63                 | 237–1023               |
| Legislated | 1,000*           | N/A                                 | N/A                                 | N/A                    | 15–60                  | 13–23                  |

Note:

<sup>a</sup> All estimates assume aside feasibility concerns outlined in section 5.2, and are based on 2015-16 volume of items, unadjusted for any demand responses to application of GST and collection costs on low value imported goods.

<sup>b</sup> Taskforce model estimates assume that ongoing costs are proportional to the volume of items on which GST is due under different settings of a GST-specific LVT. Upfront (capital) costs are assumed constant for different thresholds. Some additional uncertainty stems from estimates about the value distributions in the mail and cargo streams, which are extrapolated from sampling exercises.

<sup>c</sup> Legislated model costs are Productivity Commission estimates set out in table 3.1, plus annualised administration costs budgeted for the ATO (*Australian Taxation Office*).

Source: Productivity Commission estimates based on Amazon (sub. 35), Australian Government (2016), Australia Post (sub. S5), CIE (2016, table 3.3), DIBP (pers. comm., 6 October 2017), LVPPT (2012) and PC (2011, table 7.3).

Source: Productivity Commission (2017), *Collection Models for GST on Low Value Imported Goods*, Report No. 86, Canberra. Table is in "Chapter 5: Transporter collection models", page 99 at <https://www.pc.gov.au/inquiries/completed/collection-models/report/collection-models.pdf>

## Annex E. Examples of information reporting requirements under simplified compliance regimes for imports of low-value goods

### 1) Norway

Norway has made certain changes to customs reporting obligations to facilitate the effective operation of its policy framework for non-resident suppliers under its simplified registration and collection regime for non-resident suppliers of low-value goods. It provides the following instructions to non-resident suppliers regarding new obligations:

- **For goods shipped through the post:** non-resident suppliers are required to provide the seven-digit VOEC-registration number via electronic advance data (M33/ITMATT) when sending the consignment from their local postal service. The following guidance is provided more specifically:
  - Suppliers in UPU member countries and their designated operators can provide the ITMATT ver. 1.5.0 (both M33-11 and M33-12) with the assigned VOEC-number<sup>153</sup> as the ITMATT reference "sender.identification.reference"<sup>154</sup>. If the designated operator uses the old ITMATT ver.1.2.1 (M33-8G) the respective field is "item.submitter-party.ID".
  - This information must be attached to a UPU standard S-10 barcode on the consignment.
  - Labels CN 22/23 must be used and the seven-digit VOEC-number must be entered in the sender's address field. The VOEC-number must be labelled as "Sender's customs reference no" or "VOEC no".
- **For goods shipped by other carriers (courier, express shipping carriers): non-resident suppliers** must provide the seven-digit VOEC-number via EDI message or labelling as mandated by the shipping carrier; and transporters must provide VOEC-information to Norwegian Customs, preferably in a pre-notification in digital form, or alternatively (at the latest) when goods are presented at the border.

Norway recognises that it may not yet be possible for all suppliers that ship goods through the post to provide information electronically and, as a fallback, also advises suppliers in these cases to:

- Use labels CN 22/23 and provide the seven-digit VOEC-number in the sender's address field. The VOEC-number must be labelled as "Sender's customs reference no" or "VOEC no".

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<sup>153</sup> VOEC stands for "VAT on E-Commerce" and is the abbreviation that the Norwegian tax authority uses for its simplified compliance regime for international B2C supplies of services, intangibles and low-value goods.

<sup>154</sup> Note: this field is also part of the M43 CUSITM UPU EDI messaging scheme, which allows postal operator to communicate information in this field to customs authorities. See:

<https://www.upu.int/UPU/media/upu/documents/Standards/upuEdiMessagingXmlSchemasAndExamplesEn.zip>.

## 2) Australia

Australia takes an approach similar to Norway's, requiring express carriers and cargo transporters to report GST-relevant information into the customs' integrated cargo system as part of the clearance process. However, Australia does not yet require reporting of the same information through postal channels. Australia has provisions in its GST laws that would allow it develop a legal instrument to mandate reporting of similar information in postal declarations in the future as postal operators' reporting capabilities improve.

Australia requires non-resident suppliers that have GST collection obligations to provide appropriate receipts to consumers for supplies of low-value goods. This applies to non-resident suppliers that register under either the standard or simplified compliance regimes. The issuance of appropriate receipts acts as a protection for consumers to limit double taxation by providing proof that they have already paid GST and thus to also facilitate refunds in the event that double taxation occurs. The GST-relevant information that suppliers must provide on receipts is as follows:

- The supplier's name
- Their GST registration number, which is either the ATO reference number (ARN) or the Australian business number (ABN)
- The date of issue
- A description of the supply, including the quantity (if applicable) and the price
- The amount of GST payable
- Information that identifies whether the supplier charged GST on the goods
- If the supplier charged GST on all the goods, it can include the GST-inclusive price and state that this price includes GST (alternatively, it can include the GST for each item separately).
- If the supplier did not apply GST to the supply on some of the goods, it must show which goods were subject to GST.

Australia also places the legal onus on the non-resident supplier to include their GST registration number, any GST-registration of the customer, and the GST-settlement status of the consignment in relevant customs documents. Practically, this demands that the supplier and other participants in the transaction communicate this information throughout the supply chain. The table below summarises these reporting requirements.

**Table A E.1. Australian customs reporting requirements for verifying GST compliance on imports of low-value goods**

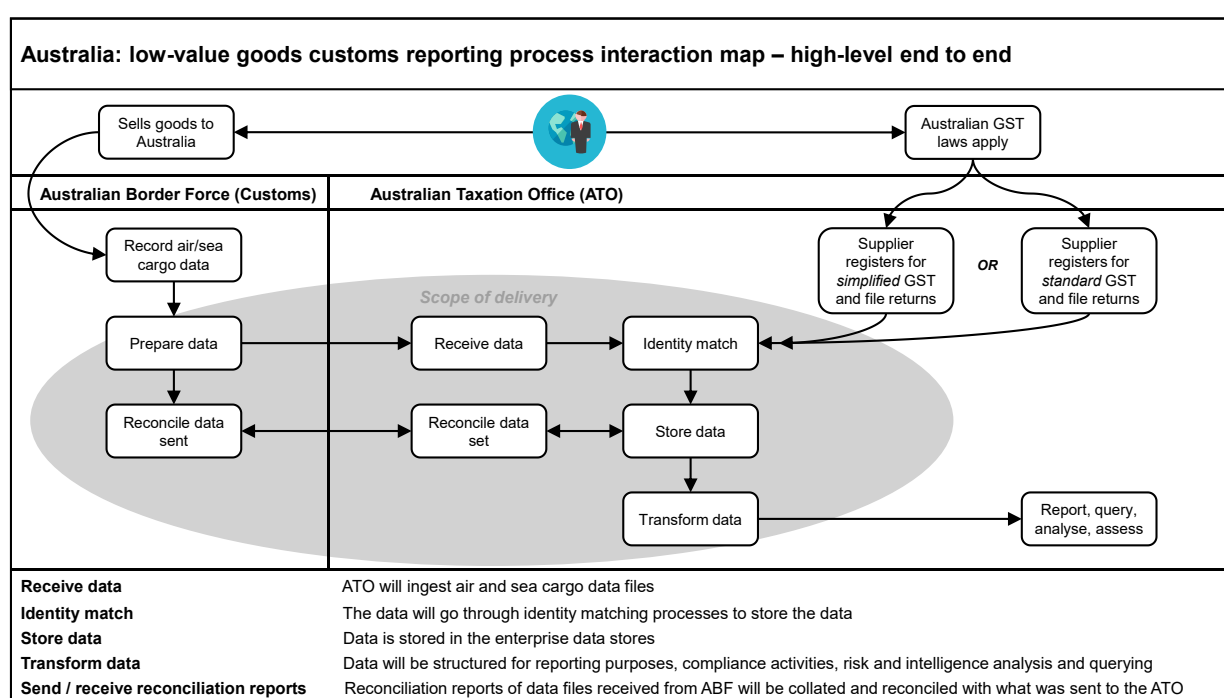
| Information the supplier must provide  | Matching fields in the integrated cargo systems (ICS)  |
|--|--|
| GST registration number, which is either: <ul style="list-style-type: none"> <li>• A 12-digit ARN (ATO reference number – Registration number under the simplified GST registration and collection regime)</li> <li>• 11-digit ABN (Australian business number – Registration number under the standard GST regime)<sup>1</sup></li> </ul> | To report this information in the "Vendor ID" field.   |
| The ABN number of the customer where it provides this to the supplier.   | To report this information in the "Importer ID" field.   |
| Whether GST has been charged on the sale of each of the goods.   | There is a field on both the self-assessed clearance declaration (with tariff lines) and the import declaration to |

| Information the supplier must provide | Matching fields in the integrated cargo systems (ICS)   |
|---------------------------------------|---|
|                                       | include a GST exemption code of "PAID", where appropriate.<br>Note: Suppliers cannot apply this code against an item with a customs value of more than AUD 1 000 (USD 688) at the time of sale. |

1. ABN stands for an Australian Business Number, which suppliers use as a GST (VAT) registration number under Australia's standard GST regime.

Source: Australian Taxation Office, *Information for transporters and customs brokers* (Australian Taxation Office, n.d.<sup>[100]</sup>).

**Figure A E.1. Exchange of GST information about imports of low-value goods between the Australian Border Force and Australian Taxation Office**



Source: Australian Taxation Office.

### 3) New Zealand

New Zealand requires suppliers to take reasonable steps to ensure that relevant GST information is available to customs authorities at the time of importation of goods. This information consists of:

- The name and GST registration number of the supplier
- Information indicating on which items in the consignment the supplier has collected GST at the point of sale at the rate of 15%, if applicable
- Information indicating the items in the consignment for which the amount of GST is zero

If the supplier did not apply GST to some items in the consignment, it must identify these items to meet the above requirements. Identifying such items enables New Zealand's new rules for the prevention of double taxation (Section 12) to operate effectively, as customs authorities will only "switch off" GST at

importation for items above the customs duty relief threshold if suppliers have charged GST at the time of sale.

#### 4) European Union

The approach that the European Union takes towards VAT information reporting for imports of low-value goods from July 2021 onwards is broadly similar to other jurisdictions. Its approach aligns most closely with Norway, which reflects the similarity of approach taken by both jurisdictions to abolish the import VAT low-value relief threshold (European Commission, 2020<sub>[101]</sub>). It has developed rules covering the issuing of invoices and the reporting of relevant VAT information through to customs authorities.

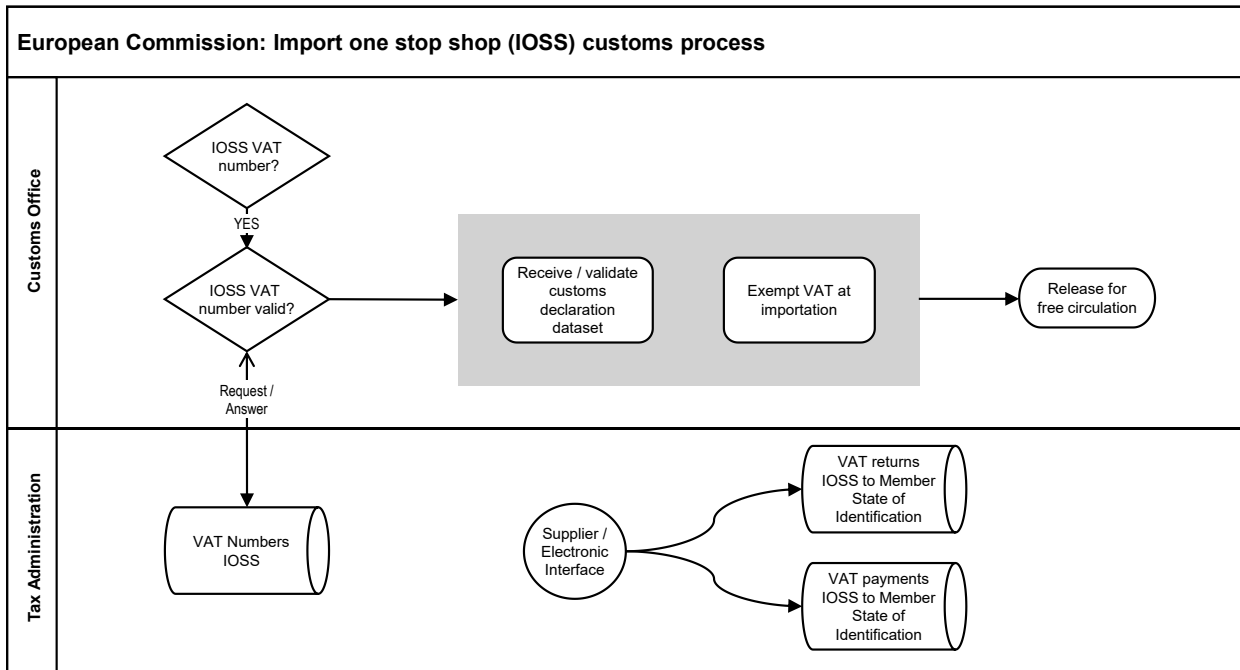
In respect of invoicing, the EU guidance indicates that “[t]he IOSS identification number of the electronic interface should not be mentioned on the invoice since communication of the IOSS number should be kept to the necessary minimum.”

The EU’s Explanatory Notes (European Commission, 2020<sub>[101]</sub>) provide much greater detail on the customs information reporting procedures that non-resident suppliers and transporters need to follow as part of fulfilling their VAT obligations. The Notes also provide detail on simplified customs clearance procedures for low-value goods on which suppliers have collected VAT at the time of supply. The following is a summary of the EU information reporting requirements for non-resident suppliers:

- Suppliers should include the following information either on the VAT invoice (if it issues one) or on the commercial invoice accompanying the goods for customs clearance:
  - a) the price the customer paid, in EUR
  - b) separately, per each applicable VAT rate, the VAT amount that the supplier charged to the customer
- Provide to the transporter/customs declarant of the goods (such as postal operators, express carriers or customs agent) the information it will need for customs clearance in the European Union, including the supplier’s IOSS VAT identification number in order to prevent double taxation and facilitate the release of the goods into free circulation.
- Under full VAT liability measures for digital platforms, many platforms will not participate in the dispatch or transport of goods on behalf of underlying non-resident suppliers. These platforms will have to provide key VAT information for customs reporting to the underlying suppliers, agreeing on strict rules with them about the use of the digital platform’s IOSS VAT identification number, including on communicating it to the transporter/customs declarant.
- The transporter/customs declarant for imports of goods has no obligation to verify how much VAT the supplier or platform has collected nor the VAT rate they applied to the goods. If a customs declaration contains an IOSS VAT identification number for the supplier or platform and that number is valid, then the customs authorities will treat the imports of low-value goods as exempt from import VAT.
- Suppliers, and deemed suppliers such as electronic interfaces, must keep records of all eligible IOSS “distance sales” (i.e. imports of low-value goods into the territory of the EU) for 10 years to cater for possible audits by EU tax authorities.

The following figure outlines how tax authorities and customs authorities in the European Union will exchange VAT information for IOSS imports to determine the VAT settlement status of the goods at the point of importation.

Figure A E.2. Exchange of VAT information about imports of low-value goods between the EU customs authorities and tax authorities



Source: European Commission (2020), *Explanatory Notes on VAT e-commerce rules* (European Commission, 2020<sub>[101]</sub>).

## Annex F. Previous OECD work to address audit and risk management challenges

The OECD has released a number of documents devoted to risk assessment and tax audit, although none of them specifically focuses on the collection of VAT on international digital trade. Other international and regional organisations have likewise produced valuable documents devoted to these topics, and they offer helpful guidance for tax administrations. Although many of these documents have already been noted in the preceding discussion or will be noted in the ensuing annexes, the following documents have special relevance for this Toolkit:

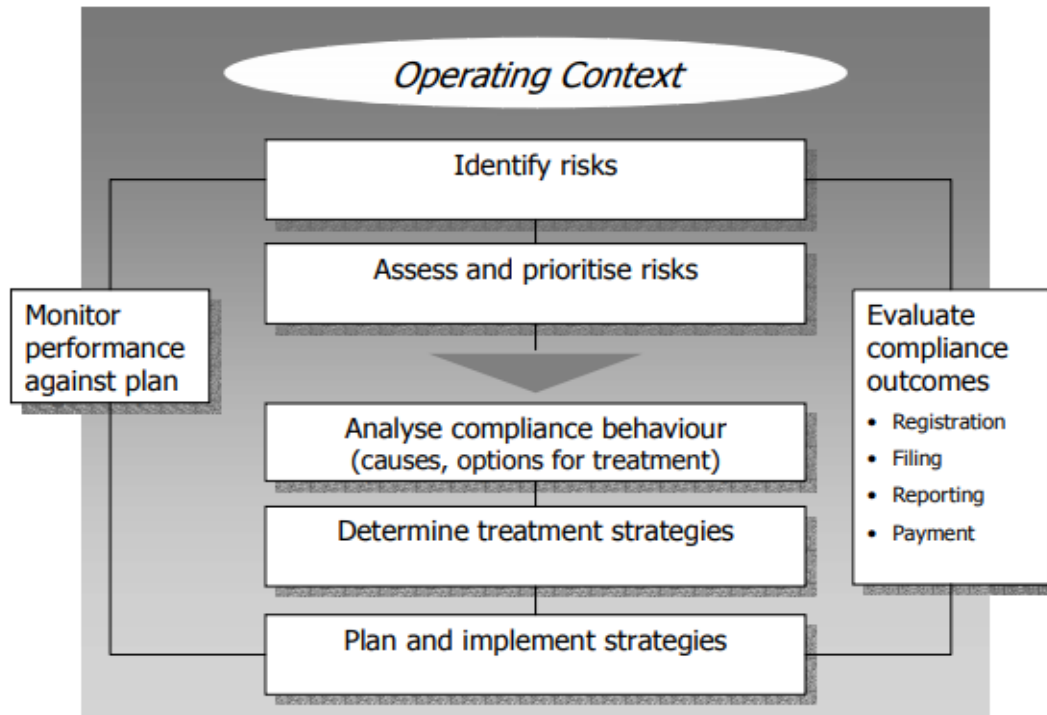
1. OECD (2004), *Compliance Risk Management: Managing and Improving Tax Compliance* (OECD, 2004<sup>[87]</sup>).
2. OECD (2016), *Technologies for Better Tax Administration: A Practical Guide for Revenue Bodies* (OECD, 2016<sup>[102]</sup>).
3. OECD (2017), *Technology Tools to Tackle Tax Evasion and Tax Fraud* (OECD, 2017<sup>[88]</sup>).
4. OECD (2019), *The Sharing and Gig Economy: Effective Taxation of Platform Sellers* (OECD, 2019<sup>[103]</sup>).
5. OECD (2020), *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy* (OECD, 2020<sup>[54]</sup>).

### F.1. Compliance Risk Management: Managing and Improving Tax Compliance (2004)

This guidance note was produced by the OECD Forum on Tax Administration (FTA). Its primary purpose is to provide guidance to tax authorities on how to better allocate the limited resources at their disposal to improve tax compliance. With that purpose in mind, the study focuses on identifying the major compliance risks, the taxpayers who should be targeted, and how best to address the compliance risks to achieve the best outcome.

The guidance note provides a framework for the application of modern principles to the management of tax compliance risks. It also sets forth a step-by-step strategic process for the identification and treatment of those risks. In doing so, it identifies and discusses general principles found in both the identification and treatment of compliance risks. The guidance note presents the following model of the compliance risk management process as it may be applied by a revenue body.

Figure A F.1. The Compliance Risk Management Process

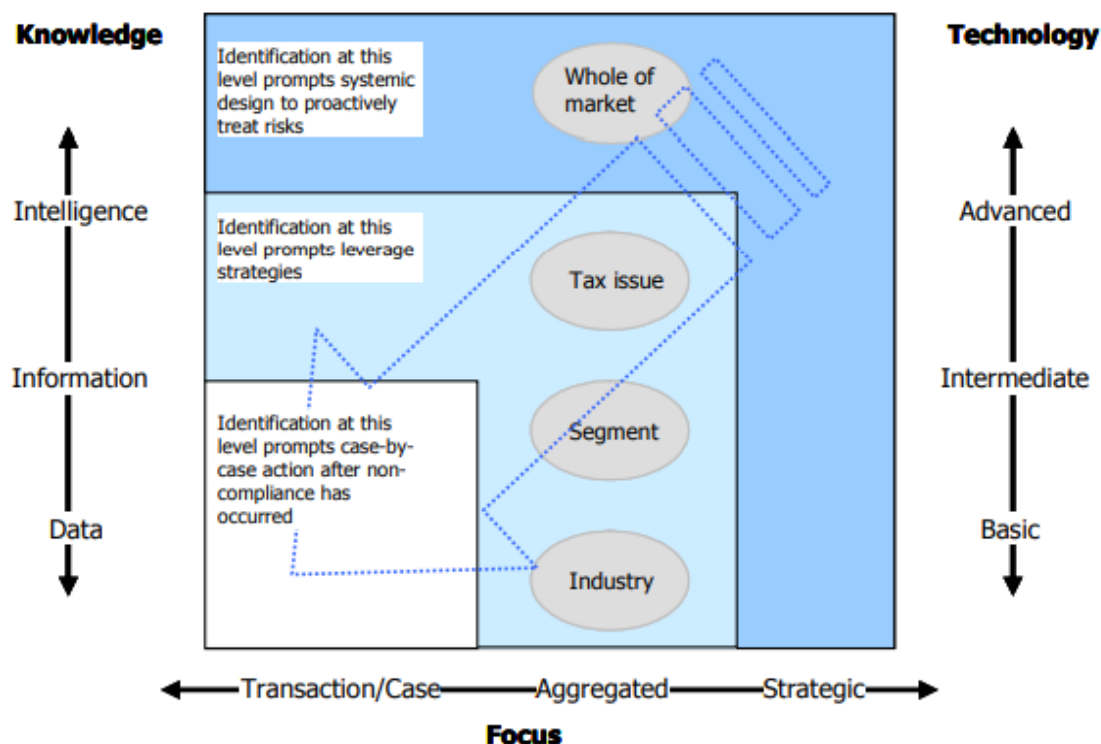


Source: OECD (2004), *Compliance Risk Management: Managing and Improving Tax Compliance* (OECD, 2004<sub>[87]</sub>).

A good compliance management system should initially identify and evaluate tax risks through grouping of taxpayers and economic activities. A second step in the process should assess and prioritise tax risks, as it is extremely difficult for the tax authorities to address all potential tax risks. Gathering and analysing relevant data and information are essential to the detection and assessment of tax risks.

In practice, compliance risks fall on a continuum and therefore an additional diagnostic model (Figure A F.2) was used to illustrate that as the level at which risks are managed increases, there is a need for a commensurate increase in the level of evidence and knowledge that both informs and substantiates the strategic risks identified for treatment.

Figure A F.2. Compliance Risk Management Diagnostic Model



Source: OECD (2004), *Compliance Risk Management: Managing and Improving Tax Compliance* (OECD, 2004<sub>[87]</sub>).

A thorough analysis of the factors that influence taxpayers' behaviour is also a recommended tool to deal with tax risks and to encourage voluntary compliance. The next step involves the design of a strategy to promote compliance, either by assisting taxpayers who are willing to comply or by discouraging those who are not, e.g. by applying penalties.

The document recommends that tax authorities perform an overall evaluation of the outcomes of the compliance strategy. The OECD's initial guidance was further developed in a 2010 guidance note entitled *Evaluating the Effectiveness of Compliance Risk Treatment Strategies* (OECD, 2010<sub>[104]</sub>).

## F.2. Technologies for Better Tax Administration: A Practical Guide for Revenue Bodies (2016)

Following a proposal from the Federal Tax Service of Russia, the FTA produced this document that, in general, analyses how tax administrations can best use emerging technologies to improve their operational effectiveness. It provides practical examples of how tax administrations have begun to utilise these technologies and delivers a maturity matrix for assisting strategic and operational decision making by tax administrations. The report also explores the latest developments in information technology that could enhance service delivery within revenue bodies, particularly focusing on developments in e-services and digital delivery, focusing on two technological features: Big Data Management, and Smart Portal Solutions & Natural Systems.

Big Data technology offers revenue bodies the opportunity to extract better business value out of existing data. To use Big Data analytics tools, the tax authorities' access to information in real time or nearly in real time is extremely helpful. Big Data technology creates the possibility of developing new and convenient

services for taxpayers, along with the ability to create new tools that will help the tax administration provide proactive services and better manage and address tax risks including tax avoidance, evasion, and fraud.

Transparency and openness are the foundation of tax authorities' use of data. The report notes the importance of preserving data privacy and maintaining data protection so that taxpayers have confidence in how tax administrations use their data. These concerns are of special importance in connection with the use of Big Data analytics tools.

### F.3. Technology Tools to Tackle Tax Evasion and Tax Fraud (2017)

This report provides an overview of some of the technology tools that tax authorities have developed and implemented to address tax evasion and tax fraud. The report is focused on under-reporting of income through electronic sales suppression and over-reporting of deductions through false invoicing, and it provides insight on how tax evasion and fraud are facilitated by the cash economy and the sharing (or online) economy and on what technology tools are available for tax administrations to deal with this challenge.

One of the techniques proposed by the report, especially to counter over-reporting of deductions, is electronic invoicing<sup>155</sup> and automated reporting. Businesses or platforms that provide information of their transactions give tax administrations access to important amounts of data that can be analysed in order to detect fraud with techniques such as matching of the data for the purchaser and seller. When information is provided in real time or near real time tax administrations have enhanced visibility of taxpayers, and any change in data produced by taxpayers after data submission will be evident to tax administrations, reducing the risk of fraud. However, tax administrations must bear in mind that these types of reporting obligations are costly for businesses and can be difficult to enforce in an international cross-border scenario.

The report identifies the risk for the sharing economy of tax fraud and evasion due to the difficulty in identifying the existence of business activity, especially for unregistered and international businesses. However, it also highlights the technology opportunities that the nature of these highly digitalised businesses present in tackling these risks, and it introduces examples of approaches that tax administrations are taking to address the sharing economy. Some of these examples will be analysed below.

Some best practice approaches for tax administrations are:

- Clear identification of their objectives and options
- Engagement and consultation with taxpayers for the implementation of any new solution
- Early engagement with the private sector
- Adoption of a pilot project approach for any new solution
- Harnessing the deterrent effect of public awareness
- Taking enforcement measures to ensure the effective use of the adopted solutions
- Engaging with taxpayers, the private sector and with each other in order to stay abreast of new risks

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<sup>155</sup> Some of the jurisdictions where the report has identified electronic invoicing are Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Italy, People's Republic of China, Peru, Rwanda and Uruguay. The report highlights that the impact in Mexico alone was that mandatory electronic invoicing in Mexico brought 4.2 million micro-businesses into the formal economy.

#### **F.4. The Sharing and Gig Economy: Effective Taxation of Platform Sellers (2019)**

This OECD document produced by the FTA is devoted mostly to the control of income for direct taxation purposes of the sellers/suppliers whose activities are facilitated by online marketplaces or digital platforms. The report indicates that while there are some similarities in the issues arising under income taxes and VAT, the risks as well as the policy and administrative responses are not necessarily the same. With this caveat that the focus of this report is on income taxation, some of the recommendations may also be useful for control of VAT.

Chapter 1 describes the current framework of the sharing and gig economy and the increasing role of digital platforms. Chapter 2 provides a global picture of approaches that are being taken by different jurisdictions. It is worth noting the provision of guidance to platform sellers on their tax obligations as well as reporting and withholding arrangements that involve the sharing and gig economy platforms. Chapter 3 sets out a range of options that tax administrations may wish to consider to enforce compliance in this sector, which involves platforms in the collection process. These options include improving self-reporting by platform sellers; obligations for the platforms to provide information to the tax authorities or to the sellers; withholding for income tax purposes; requiring the platform to have a physical presence or to register in certain jurisdictions, etc. In this regard, the document also recommends promoting and improving the automatic exchange of information among tax administrations, especially making use of the Multilateral Convention on Mutual Administrative Assistance. Finally, Chapter 4 provides a set of recommendations, including a standardized reporting model for the digital platforms.

#### **F.5. Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy (2020)**

This publication contains the OECD's Model Rules for the introduction of domestic reporting obligations requiring sharing and gig economy platforms to collect information on the income realised by platform sellers offering accommodation, transport, and personal services and to report the information to tax authorities.

The growth of sharing and gig economy platforms presents significant opportunities for tax administrations, as it may bring activities previously carried out in the informal cash economy onto digital platforms, where transactions and related payments are recorded in electronic form. If leveraged in the right way, this can lead to greater transparency and minimise compliance burdens for both tax administrations and taxpayers.

At the same time, certain activities carried out through these platforms may not always be visible to tax administrations or self-reported by taxpayers. This is because the development of the sharing and gig economy entails a shift from traditional work relations under employment contracts to the provision of services by individuals on an independent basis, which is not typically subject to third-party reporting. These developments present risks of distorting competition with traditional businesses and reducing declared taxable income.

Against that background, a number of jurisdictions have already introduced measures requiring platform operators to report revenues received by platform sellers to the tax authorities, while others are planning to introduce similar measures in the near future.

The Model Rules aim to overcome the challenges that governments may face in connection with the enforcement of domestic reporting requirements when the platform operator is not located in their jurisdiction. They also aim to contain the proliferation of different domestic reporting requirements, which may lead to increased costs and potentially harmful barriers to the further development of their businesses (see further Annex C for the summary of the Model Rules).

Work is ongoing on the development of (a) the legal framework for the automatic exchange of information collected under the Model Rules and (b) an optional module that would allow the Model Rules to also cover the sale of goods and the rental of means of transportation.

The primary focus of the reporting model is the taxation of income earned by platform sellers. However, the document highlights the potential use of the reported information for VAT purposes, especially in cases where the relevant services are taxed for VAT purposes in the seller's jurisdiction of residence, and where the reported information is related to rental of immovable property.

The Model Rules are designed primarily to facilitate and support compliance by sharing and gig economy providers with their income tax obligations, while ensuring a level-playing field with traditional businesses. However, the Model Rules also highlight the potential use of the reported information for VAT purposes, especially in cases where the relevant services are subject to VAT in the residence jurisdiction of the sharing and gig economy provider (which applies to many typical sharing and gig economy services), and in cases that involve rental of immovable property (including holiday rental) which are typically subject to VAT in the jurisdiction where the immovable property is located.

## Annex G. Tools and techniques to combine data and analytics

As international digital trade involves non-physical channels and may involve completely online services and intangibles that businesses can supply without any physical presence, it is not possible for tax administrations to directly observe and collect data on every relevant transaction.

Tax administrations therefore need to source data indirectly related to the taxable events and circumstances in order to make accurate tax determinations. Data that are richer and more closely related to taxable events and circumstances, such as transactions, activities or payments, will facilitate better estimates and determinations. However, some of this indirect data may be obtained by tax administrations only in individual cases, because of legislation, because of the cost of providing such data for taxpayers, or because the needed data would exceed what tax administrations are able to process. As a consequence, in such circumstances, only gross estimates can be made for the entire population of taxpayers.

Comparing estimates of tax transactions and circumstances with what individual taxpayers are declaring allows tax administrations to estimate non-compliance. However, as tax administrations sometimes work only with gross estimates, they need to decide in which cases they wish to obtain further information in order to refine the calculation of tax events and circumstances so that, equipped with that information, they can more effectively enforce taxpayers to comply. Tax administrations will therefore need to analyse the incomplete information available in order to select the cases on which they are able to work, depending on the risk of non-compliance. The Toolkit recommends that tax administrations perform such analysis using data analytics tools.

Tax administrations should consider adopting a data analytics strategy so that they can base their risk analysis on data. Such a strategy should take into account people, processes, analytics governance, and organisation, and establish a roadmap for the deployment of systems and infrastructures for data analysis. To support VAT compliance risk assessment in respect of non-resident suppliers that have VAT obligations in a given jurisdiction, the following groups of tools may be considered:

- Data acquisition
- Data conversion
- Data indexing
- Descriptive analysis and crosschecks
- Predictive and prescriptive analysis
- Rule-based systems

### G.1. Data acquisition

As noted above, richer data and data more closely related to taxable events and circumstances, such as transactions, activities, or payments, enable better risk analysis. The Toolkit recommends that tax administrations analyse all available data sources related to international VAT to maximise the accuracy

of their risk analysis by making best use of the obtainable information (see also subsections 5.1.4 and 5.2.3). In doing so, they should consider the following categories of data sources:

- Data declared by the non-resident supplier (or another stakeholder that has VAT liability such as a digital platform or a redeliverer). As described in Section 4 of the Toolkit, tax administrations may deploy systems for businesses offering goods and services to declare their sales in the territory. Tax administrations may also possess other data declared by the same taxpayers related to other fiscal obligations.
- Data declared by other taxpayers for other purposes that may be relevant for international VAT risk assessment.
- Data reporting obligations for entities other than the taxpayer about the taxpayer, such as international financial transactions or sales by international companies facilitated by digital platforms (where these platforms are not themselves treated as suppliers under a jurisdiction's full VAT liability regime).
- National and international exchanges of information, such as exchanges of information with financial intelligence units.
- Information obtained upon request from the taxpayer or other entities, for example the movements on bank accounts requested from banks or the accounting files requested from taxpayers.
- Forensic data, obtained directly at the taxpayer's premises. In the context of VAT-compliance by non-resident suppliers, it is unlikely that tax administrations will have access to this kind of data.
- Data directly observed by tax officials, for example by physical inspection of premises or activities in the case of international sales of goods through platforms, or by making online purchases directly from high-risk offshore suppliers who make supplies to national customers. In the case of services, such observation may look to public data sources as explained in the next paragraph.
- Data available in public sources, especially on the Internet. Tax administrations can either search the Internet in order to find websites related to international transactions or they can use scraping techniques to extract information from particular sites and platforms. With respect to scraping techniques, the scraping tool should be adjusted for each site or platform, and the process involves collecting the information, structuring it if necessary, identifying the persons involved in the transaction, and storing the details of the transaction in a form that is amenable to risk analysis. The main difficulties with reliance on public data sources is that platforms and websites tend to employ technical measures, such as the use of captcha mechanisms, in order to avoid the automatic extraction of information.

It is not always easy for tax administrations to identify the businesses or individuals underlying the offers that appear on digital platforms. Tax administrations should recognise that when a platform intermediates the payment between the customer and the provider, the customer and provider may not need to reveal their true identity. To address this problem, it will be more effective for tax administrations to require platforms to provide the relevant information by creating a new reporting obligation rather than relying on existing sources of information. On the other hand, in some cases, platforms' functions are limited to putting customers in contact with providers, and providers must offer customers some means of additional contact to complete the transaction. Whether the additional contact information takes the form of a telephone number or an email address, such information may be used by tax administrations to confirm the underlying identity of the supplier or the customer by, for example, checking the telephone number with telephone directories or databases. In addition, established providers generally need to ensure customers of their reliability and, with that concern in mind, make their identity available on the platform.

## G.2. Data conversion

Data acquired by tax administrations may be received in a variety of formats. Tax administrations are encouraged to define the data formats that are most useful for them when acquiring data by means of a declaration or an interchange. They may even define specific formats to be provided by taxpayers upon request, for example in the case of reporting accounting records to tax administrations. For these purposes, tax administrations should favour the use of structured data, as analytic techniques are applied more effectively to structured data. Whenever available data is provided in unstructured or semi-structured formats, or in formats that differ from those used by tax administrations, thereby complicating integration, tax administrations will frequently need to structure or transform data, and this may diminish the quality of information. This will be generally be the case, for example, for data acquired on the Internet.

Tax administrations may use data transformation tools in order to convert data into formats that are compatible with the rest of their data. In this context, tax administrations should take special care with regard to the codification of data, as there may not be a direct means of encoding received data. This problem arises particularly with respect to taxpayers' identification numbers (TINs). Data will usually need to be assigned to a certain person, and whenever the received data lack a TIN, tax administrations will need to use identification processes that may take into account all available data in order to match taxpayers with their TINs. Even when additional information such as dates of birth or addresses are used to identify taxpayers against tax administrations' taxpayer databases, the process may not be simple, as 'fuzzy matching' techniques<sup>156</sup> need to be used in order to allow for misspellings and other possible errors in identification.

Textual data in image format will need to be converted into text by optical character recognition techniques. The quality of the conversion will depend on the quality and resolution of the original image, and it usually results in the receipt of unstructured text.

Natural language processing techniques are improving daily and can be used to obtain structured data from data comprised of unstructured text. Text analytics based on the definition of rules such as the analysis of regular expressions or against dictionaries can be used quite easily for the extraction of entities in documents, such as TINs, names, addresses, and so on. However, the richer the information to be extracted, the more costly and burdensome it will be to obtain such information with this approach.

Machine learning may also be used for the classification of images or of unstructured text. These techniques take into account sets of annotated data (data for which the classification has already been made, typically manually), infer the characteristics that define how the text or images have been classified, and automatically apply the same classification to new sets of data. While promising, tax administrations need to recognise that obtaining annotated data sets that suffice for the purpose may be expensive or even impossible.

## G.3. Data indexing

When tax administrations need to deal with unstructured text data, it will be useful to employ indexing systems that create indexes of all the processed information and allow for text searches in all the documents. This technique is particularly useful for forensic data analysis, as text documents and other unstructured information such as emails may be obtained in taxpayers' systems. Data obtained through

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<sup>156</sup> "Fuzzy matching" techniques in the context of taxpayers' identification enable the identification of a taxpayer when only part of its complete name or a misspelled name is available. In doing so, these techniques take into account the similarity of the incomplete or misspelled name with all the complete names in the taxpayers' database, choosing the closest. Thresholds may be set in order not to provide an identification when more than one taxpayer are at a similar distance from the name being searched.

scraping techniques may also be unstructured or semi-structured and benefit from this approach. Consequently, tax administrations may eventually confront the need to analyse this kind of information, which usually is accessed in an unstructured format for the purpose of international VAT risk analysis, and their analysis of the data will benefit from the use of indexing and related organisational techniques.

#### G.4. Descriptive analysis and crosschecks

Descriptive analysis consists in finding anomalies in data that can be signs of risk of non-compliance.

The simplest analysis involves data visualization and queries. Through visual inspection or queries on data, tax officials may find cases that do not seem to reflect indicia of normal business practices and that may indicate a risk. Data analytics platforms are software infrastructures that provide these functionalities among many others. It will be useful for tax administrations to grant access to relevant data for all tax officials who may be in position to detect new risks. In order to do so they will need to ensure the following dimensions of data governance: quality, security, semantic clarity, completeness, and integration.

When tax administrations have access to different data sources, crosschecks will be essential for the detection of risks of non-compliance. For example, comparing returns submitted by non-resident suppliers with bank payments or with information provided by logistics operators, tax administrations may find inconsistencies indicative of non-compliance.

Applying statistical analysis to data will provide tax administrations with further insights. Business specialists may perform the simplest analysis as in the case of identifying outliers in business indicators. For example, tax administrations may assume that similar companies have similar business indicators, such as time evolution of sales or average price of goods or services. Outliers may be due to differences in business practices or in non-compliance. For this purpose, clustering techniques may be applied in order to find groups of similar taxpayers and to establish that differences between taxpayers in a group are less likely due to normal business circumstances.

Another example of simple analysis is the use of Benford's law, which states certain frequency distribution of leading digits in numerical data sets that respond to certain distributions. This approach can be used in order to find anomalies in sets of data, for example in the declared value of operations. If the value of declared transactions by a taxpayer does not respond to Benford's law when similar taxpayers do, it may indicate that the taxpayer is inventing or selecting the values it declares to tax administrations.

More advanced statistical analysis may be applied to data to gain further insight. However, tax administrations must bear in mind that most of the insight is obtained with simple analysis by business experts. The Toolkit, therefore, encourages tax administrations to place their major efforts in ensuring availability of data for business experts through intense data governance, as supported by tax administrations' involvement in data analysis through training, availability of data analytics infrastructures and the help of data analysis experts. When a sufficient number of senior tax officials have access to all relevant data, further insight from specialised techniques will be less essential, and can lead to a reduction in the size of the team of data scientists upon which tax administrations previously relied for their data insights.

The analysis of indirect relationships between taxpayers or between any kinds of data will require the use of network analysis (frequently known as social network analysis or SNA). Network visualization tools will allow tax officials to depict a limited number of relationships (for example family and corporate relationships) between a group of taxpayers, who may, for example, have split their business into separate companies in order to be less visible to tax authorities. When larger networks need to be analysed, specialized queries may be used to find relationships that respond to certain conditions. More advanced network analysis techniques can be used by tax administrations in order to find anomalies in the inter-relationships among taxpayers but will require the participation of data scientists in order to select and

implement algorithms. When tax administrations plan to use network analytics for the identification of international VAT risks, they must bear in mind that availability of relationship data for non-resident businesses may be limited and, therefore, network analysis less useful.

Unless large tax administrations deal with information regarding individual transactions, such as the declaration of individual invoices, or relationships in very large networks, they do not normally deal with data sets larger than a billion records. Therefore, for most purposes many data analytics platforms and technologies may be used. When data sets exceed the range of a billion records, the use of big data technologies, which distribute processing among a range of inexpensive data processors, may be necessary.

## G.5. Predictive and prescriptive analysis

Tax administrations may estimate that certain known characteristics of taxpayers (or behaviour-input data) may be a good predictor of other characteristics of those taxpayers (or behaviour-output data). For example, transactional data required to be reported by the financial system (e.g. payments by credit card to non-residents) may be used to predict present or future sales. Likewise, sales of a group of taxpayers combined with other characteristics of their business such as the number of positive opinions shared by their customers in a digital platform can be used to predict the sales of other groups of taxpayers. If tax administrations have data sets that already contain input and output data for a number of taxpayers, then they may use supervised analysis to predict the output data for a different group of taxpayers. Supervised analysis is a set of techniques that enable the deduction of a function (be it numerical or categorical) based on a set of training input-output data. Applying the function to new input data enables tax administrations to predict output data for that input. Therefore, supervised techniques, or supervised learning, can be used by tax administrations to predict taxpayers' behaviour. Prescriptive analysis will use that information in order to make decisions.

Known results for a set of input data different from the one used to deduct the function may be used by tax administrations to measure the effectiveness of the deducted function. This approach may also be used to determine the input data for which the deducted function is able to produce results of a certain quality. The terms' precision and recall are measures of the number of cases for which the prediction is correct or for which a correct prediction is made in comparison with the total occurrences of that prediction. Nevertheless, regardless of the quality of the precision and recall of a particular algorithm, tax administrations will need to check its performance against real data. They can do this by comparing the hypothesised results that they generate from applying the function to a set of input data against the recorded results for that set of input data in real life.

The availability of adequate data that can be used to estimate the function (training data) is of utmost importance in supervised analysis, as it is the base of the analysis. Some of the reasons why data can be inadequate are:

- An insufficient quantity of data will affect the quality of the model. When the number of different inputs that need to be considered increases, that is, when many unrelated conditions affect the result, the size of the training data set will also need to increase.
- Biases in the training data will be replicated in the results of the model. For example, past decisions of tax officials may be used to create a model in order to predict what their decisions would be for new cases – and eventually automate those decisions. If tax officials were biased in their decisions, for example against or in favour of certain type of taxpayer, the results of the model will replicate that bias.
- A typical type of bias is the assumption that what has happened in the past can be applied to the future. Training data will usually be used to obtain a function that can be applied to new data. In doing so, tax administrations are assuming that the behaviour of taxpayers will be consistent over

time. However, if data of three years ago are used to predict today's behaviour, it may have changed due to information that is not present in the model (such as the economic environment). Therefore, updating models is essential.

Tax administrations may consider using supervised learning to predict non-compliance, based on known cases of non-compliant taxpayers or risk occurrences.

## G.6. Rule-based systems

The term rule-based systems means systems for which tax administrations may define known risk types, in terms of preselected queries to databases or conditions over a flow of data that are denominated as rules, so that these rules can be applied to new incoming data in order to identify new risk occurrences for the known risk types. For example, risks identified by business experts such as incoherence in crosschecks are easily expressed as rules, which are often called business rules. Many risks identified through statistical analysis may also be expressed in terms of conditions in data, and therefore as rules.

When a complex algorithm cannot be expressed in terms of the language used by the rule-based system, the results of the execution of the algorithm with new data may be stored in order to create a rule based on such results. For example, if a predictive model is used to detect false invoicing, the results of new potential false invoicing companies may be stored in a database so that a rule can be defined for false invoicing based on the existence of a company in such database.

Rule-based systems may be used by tax administrations to create risk management systems. The repository of risks will be expressed in formal terms as rules in the system and the results of any risk evaluation may be combined with other risks in order to determine what actions may be taken.

The connection of the rule-based system with the tax administrations' operational systems will ease the production of automatic actions in response to risks.

## G.7. Using the results of analytics

The means by which tax administrations make use of the results is critical to obtaining the essential benefit of the use of data analytics and risk analysis. For example, inadequate risk governance and knowledge management may result in different sectors of the tax administration using different approaches for the same cases. Another common example would be the partial use or non-use of the results of some analysis due to the inability to make them available to concerned tax auditors.

Risk governance and particularly risk infrastructures need to be adopted by tax administrations. Specifically, they must ensure that all identified risks are uploaded and updated in the risk repository, so that any selection for further action can profit from all the known risks at the tax administration.

When defining the actions that should be taken for certain risk or combination of risks, tax administrations should take into account the nature of the risk definition as well as the quality of data and precision and type of algorithms that are implicated.

Tax administrations may consider taking automatic actions in response to risks expressed in terms of rules, especially when such rules have been introduced into legislation and the quality of data used to evaluate such rules is good. For example, legislation could be adopted requiring registration by non-resident companies receiving payments that exceed a certain threshold. If information regarding such payments was received from a reliable source such as a bank, automatic actions could be adopted in order to enforce such registration.

In cases involving poor data quality, potential bias in training data, low precision of models, or even the use of algorithms that are difficult to explain or face potential controversy, tax administrations may

reconsider the use of automatic enforcement actions. In order to do so and enhance the application of the results of the analysis, tax administrations should also consider the risk and consequences of a potential incorrect or biased decision. Alternatives range from automatic actions of a relatively inconsequential character, to combining the identified risks with other risks in order to decide more consequential automatic action, or even proposing the selected risk case for manual decision. For example, data about rental offers extracted from the Internet may be of low quality due to the difficulty in identifying the offering taxpayer. In such a case, tax administrations may send letters to the taxpayer explaining the applicable tax requirements and inviting compliance before further action is taken.

## Annex H. Governance framework for establishing audit and risk management infrastructures

The Toolkit recommends that jurisdictions adopt governance frameworks for the establishment of audit and risk management infrastructures.

### H.1. Who should oversee the process of building/acquiring the appropriate infrastructure

When jurisdictions face the necessity of building or acquiring infrastructure for audit and risk management in respect of VAT-compliance by non-resident suppliers, they must bear in mind that the effectiveness of such infrastructures will be key to the project. The Toolkit therefore recommends that a senior official with a good degree of tax audit and IT knowledge be appointed for the task. If not available, a senior official or consultant with a good degree of knowledge in one of the areas and some in the other could be selected, as long as a specialist on the other field assists the appointee.

The overseeing official should have prior experience in assisting with the implementation of major IT infrastructure projects for audit purposes and/or elaborating audit strategies. This experience will be useful in all the decision-making processes.

In larger organisations, a committee of senior audit and IT officers should be in place to support the overseeing official and ensure adequate coordination with other areas.

### H.2. Assembling a suitable team of specialists

Tax administrations may adopt different strategies in order to implement the risk management system. The team of specialists that they will need to gather for the task will depend on that selection. In all cases, tax administrations will need to be able to express their needs in terms of system definitions whether to produce a request for proposal or to provide specifications to the development team. For such purposes, the team of specialists must on one hand have knowledge about international VAT, risk management, and a general knowledge about applicable sources of information and potential risks. On the other hand, the team will need to have a background in information technology, and specifically in existing IT infrastructures in the tax administration, in order to ensure the adaptation of the system to such infrastructures and its compatibility and integration with existing operational and analytics systems.

Tax administrations that decide to outsource software development will need to ensure that the project team includes tax officials with a good knowledge of the systems' needs who will test the proposed solution. Participation of the tax administration's IT team also will be needed to ensure integration with pre-existing infrastructures.

In order to select commercial or open-source software, tax administrations will need to appoint a team in order to test possible options. To do so, business users with a knowledge of system needs and IT specialists in order to install and assess high-level integration will be needed.

In-house software development will require the largest and most skilled group of specialists. In addition to defining business and IT requirements, the team will need to be capable of building the system, and testing will also be necessary. An IT project manager will need to be appointed, and the appointee will need to estimate the size of the software development team depending on the scope of the system that has been defined. The project manager will also need to select the development technology, depending on facts such as availability of skills and integration with other tax administrations' subsystems. The project manager will also need to define the methodology that will be used and determine how to establish an adequate dialogue with the business community to understand their requirements in order to ensure that the developed software will fulfil tax administrations' needs.

Once the risk management system is in place, teams of specialists should undertake risk identification and analysis according to governance principles. Tax administrations must bear in mind that a combination of business skills and data analytics skills will be needed to perform risk analysis based on data.

Tax administrations should consider the collaboration of the business and analytic specialists in multidisciplinary teams dedicated to risk identification and analysis whenever advanced analytics need to be used.

Although it is not a generally recommended option, tax administrations that decide to outsource all or part of the risk management activities will need senior expertise in service outsourcing management to ensure adequate contract specification and performance control.

### **H.3. Information security, data protection, and ownership of intellectual property rights**

#### ***H.3.1. Confidentiality of tax records***

One major concern for the taxpayers submitting information to the tax authorities is that the information be used only for tax purposes and only by the tax authorities. The information is often highly sensitive as it may disclose, for instance, businesses' profit margins, most commercially targeted regions, discounts policies and even reveal a business' current and future commercial strategy. Special reporting requirements (e.g. for digital platforms) and the use of data analytics techniques, which are frequent in the area of digital trade exacerbate the risk.

Tax authorities must therefore keep all the information received confidential and secure, to prevent access by third parties (media, competitors, etc.). They also need to implement a robust and effective system to control internal access to such information and assure its proper use (see subsection H.3.4).

The business expectations regarding confidentiality of the information reported to the tax authorities must be understood in terms both of contractual commitments with their counterparts and of maintaining the protection of their internal commercial decisions, commercial or intellectual property and commercial strategies.

#### ***H.3.2. Confidentiality and intellectual property of technological innovations developed on behalf of the tax authority***

Due to the nature of systems for risk analysis, disclosure to third parties of the systems' features may facilitate potential attacks and abuse. Even though there may be controversy whether an open software approach can benefit from public scrutiny, due to the limited interest that these systems may attract in the coding community and the potential benefit for wrongdoers, it is recommended that it be contractually specified that any technological innovations developed tax by officials on behalf of the tax authority for risk analysis or auditing purposes remain the intellectual property of the government/tax authority, in accordance with the relevant local legislation. These contracts should also specify that employees of any

third party that the tax administration may have engaged to help develop the technology associated with risk assessment may not publish the technical specifications and operating software designs and codes involved, irrespective of whether for commercial gain or non-commercial reasons.

### ***H.3.3. Ensuring information security***

Tax administrations should take a holistic approach to information security, as the weakest element is the most vulnerable source of information leaks. Specifically, a team of dedicated staff at a systems level will be needed to:

- Periodically test and reinforce the security of the infrastructure to protecting it against organised hacking or cyber-attacks.
- Perform robust internal audits to test for and address instances of unauthorised use and put in place preventative measures to resolve identified vulnerabilities.
- Limit the number of officials having access to sensitive information.
- Regularly train authorised users to protect against phishing and other attacks.

### ***H.3.4. Internal audits to address unauthorised use and preventative measures to resolve vulnerabilities***

To prevent, detect, and punish unauthorised use of VAT records by tax officers, a systematic and (when possible) automated system to control the access to those records and the proper use of them should be implemented by the tax authorities.

The proposed system should include the following elements:

- The strict obligation for those tax officers managing tax records to keep them confidential and to access such records only when the specific area of risk or the particular taxpayer has been assigned to their risk assessment or control duties. This clear and strict obligation of confidentiality can be included in the contractual arrangements between the tax officer and the tax authorities, in the general tax provisions established in tax law, or in both.
- A systematic and preferably automated system to register every access by the tax officers to the taxpayer's information, including the date of access and the type of information consulted by the tax officer. To ease the access control process, the tax officer accessing the data may include at the beginning of the data consultation a brief justification of the need for access.
- A systematic and preferably automated system to monitor the proper use of VAT records by tax officials to detect unauthorised access. A system to grade the risk of unauthorised access may be helpful, including criteria such as 'taxpayer not assigned to the specific tax officer', 'taxpayer outside the geographical/turnover/type of economic activity, etc.', 'competence of the tax officer', etc.
- The system in place should also include sanctions for confirmed unauthorised access. The sanctions might be more serious when the unauthorised accessed information has been used for the personal benefit of the officer or for third parties' benefit.

## **H.4. Proprietary systems versus procuring solutions from the market**

Tax administrations that implement risk management systems and infrastructures will face the decision of how to implement the systems they need. The main alternatives are:

- Develop software in-house
- Outsource software development

- Acquire a commercial off-the-shelf (COTS) or open-source software (OSS) solution
- Outsource all or part of the risk management activities

The alternatives are ordered in decreasing level of control of activities by tax administrations. Mixed scenarios are also possible, as governments may choose different alternatives for different parts of the system or activities. For example, governments may buy a COTS solution for data analysis and build their own risk management platform in-house.

#### ***H.4.1. In-house software development***

Tax administrations that decide to build themselves a risk management solution or parts of it take the responsibility for delineating and effectuating the solution. They will need either to appoint software development specialists from their own staff for the project or to contractually engage them. Under this approach, the knowledge about the software solution remains in the organisation.

The main advantages of this alternative are:

- Tax administrations can adapt the system to their specific needs.
- Integration with other information systems will be easier and more effective.
- Further modifications of the system will be easier and much quicker.
- No or fewer dependence on external agents.

In order to build risk management solutions, the software development team will need to work in close relationship with the risk management specialists who are responsible for defining the specifications of the system. A computer systems base will be needed to support software development and operation.

The main disadvantages of this alternative are:

- The system construction may take longer than other solutions, especially if the system requirements change during the system construction.
- Dependence on external agents is reduced, but vulnerability to changes in the project team still remain.
- Software development may be more expensive than pre-built solutions. This is especially the case for systems and technologies with a wide user base such as system software, databases, and many analytics solutions. For this reason, in-house development strategies should take into account the acquisition of commercial or open-source software solutions for some needs.
- Changes in specifications during the software development process can affect time and budget estimates, although the use of agile methodologies can reduce this risk and produce software that is more adapted to actual needs.

#### ***H.4.2. Outsource software development***

Tax administrations that outsource the development of a risk management solution (or parts of it) select a contractor who will be responsible for the definition and/or construction of the solution. In order to select the contractor, they will need to define the system's specifications in terms of a request for proposal (RFP), and they may also seek external assistance in order to produce the RFP. Under this approach, the contractor possesses and controls the knowledge underlying the software solution.

The main advantages of this alternative are:

- The tax administration does not need to assign human resources to the project.
- The risk of delays or additional costs due to changes in specifications is reduced, as only what is specified will be produced.

- The contractor assumes part of the risk in software development.

The RFP and contractor selection are crucial in this scenario. Low quality RFP may lead to undesired results, but it is usually difficult for users to have a clear idea of their needs before they begin to use the system. If contracting policies are compatible with the use of agile methodologies, tax administrations should consider requiring the use of such methodologies by contractors to increase flexibility, at the cost of having a less defined initial scenario.

The main disadvantages of this alternative are:

- The solution will be less adapted to tax administrations' needs.
- Changes in specifications during the development phase may be difficult and costly, if they become necessary.
- Further changes in the system can be expensive, as there is one provider who is in a much better position to bid for the next contracts than its potential competitors. This can also be a challenge if contracting policies clearly state the need for open competition.
- Software development may be more expensive than pre-existing software alternatives. This is especially true for systems and technologies with a wide user base such as system software, databases, and many analytics solutions. To address these concerns, outsourced development strategies should take account of option of the acquiring commercial or open software solutions to address some needs.
- It may be difficult for tax administrations to control the results of the project, especially if the quality of the RFP is poor.

#### ***H.4.3. Acquire a commercial off-the-shelf (COTS) or open-source software (OSS) solution***

The acquisition of a COTS or OSS solution provides tax administrations with the opportunity to examine the system they intend to adopt before they purchase it. If the use of a particular solution is widespread, tax administrations can be confident that such a solution will address many of their principal needs. Communication with existing users can give them further insights about what they can expect. The selection process will include identification of the alternative solutions available in the market and, perhaps, the testing of the most attractive options prior to purchase.

The main advantages of this alternative are:

- Governments can have certainty regarding the software's characteristics, particularly if they can test it in advance.
- Reduced time and cost of the initial solution.
- Products may cover the related needs of other similar organisations.

The most important question for governments to raise in this scenario is whether products in the market really cover their needs. Functionalities that are common to many organisations such as information analysis may be found in many products. However, specific needs for tax audit and risk analysis in an international VAT context may be less common in the products available in the market. Although most products are adaptable to modification and providers may ensure that their products can be customised to any need, tax administrations must recognise that the cost of adaptations can be very significant and, unless the solution is adopted "as-is", costs in terms of time and money ultimately are likely to exceed the costs of a custom solution built from scratch.

Commercial products usually are supported by a company that will take care of product updates and, to some extent, to customers' needs. Limited adaptations usually will be available through customisation, and some interfaces or even specific languages to extend functionalities may also be obtainable. Nevertheless, these options must be exercised with caution in order not to incur excessive additional costs. Open

software solutions may be supported by a company or by the software development community. It generally will be easier to extend functionality for OSS solutions, as source code is available. Nevertheless, adapting the extension to future versions of the software can be a challenge, so extensions should be avoided if possible.

The main disadvantages of this alternative are:

- It will likely be difficult and expensive for governments to tailor the product to specific needs.
- Integration with governments' systems will be limited to products' interfaces.
- Governments might become extremely dependent on the solution and its provider, because of the difficulties of changing to another system.
- Operation costs may increase because of the reduced adaptation to governments' needs. An in-house solution, if adequately built, should be specifically tailored to the administration's needs and hence be simpler to oversee and utilise.

#### ***H.4.4. Outsource all or part of the risk management activities***

Some governments may outsource some or all risk management activities in some circumstances. In such cases, a contractor is selected and governments define and control the services under consideration in terms of the expected results. Key performance indicators (KPIs) are selected in order to evaluate the performance of the contractor and the risk management services it provides. Because responsibility for conducting the risk management activities in such cases is transferred to the contractor, the government may no longer need to develop or deploy various systems that would previously have been essential to discharging its risk-management obligations.

This alternative has some advantages, such as:

- Simpler implementation for governments
- Reduced implementation time and lower initial costs

The RFP and contractor selection are crucial to this option. Low quality RFP or an inadequate selection of KPIs will lead to diminished results and may lead to contractual disputes.

The main disadvantages of this alternative are:

- Depending on local legislation, the outsourcing of control activities may not be permissible.
- Even if legislation permits outsourcing, governments must recognise that audit tasks comprise part of their critical functions that they should conduct themselves to maintain the integrity of the tax system as well as the distinction between the public and the private sector, so this option is not generally recommended.
- Governments may become overly dependent on contractors for performance of the activity. Most of the knowledge and expertise associated with the activity may be controlled by the contractor and this may lead to missed opportunities for improvement that are of particular relevance to tax administrations.
- This solution usually generates the highest costs of operation. Contractors will generally assume the initial costs but will charge tax administrations throughout the contract so as to amortise their costs and produce a customary profit. It will be difficult for tax administrations to benefit from any increase in operational efficiencies as these are more likely to be captured by the contractor. Once the contract is completed, the contractor will be in a strong position to expand its operations and its profit margins, as other possible contractors will be less competitive due to the need to incur the initial costs that the first contractor has already amortised.

#### *H.4.5. Selection criteria*

Tax administrations should consider the advantages and disadvantages of different options in order to select the right alternative for their needs. Governments are advised to choose the affordable alternative that offers tax administrations the highest degree of control of activities unless they can find COTS or OSS systems that fulfil all their needs.

Some components of the risk analysis and auditing components are common to many industries, particularly data analysis systems. Many COTS and OSS systems are available in those areas, and most governments will benefit from their use, as it would be difficult for them to keep pace with market advances along with managing their own developments. If OSS with a large user base addresses all their needs, jurisdictions may consider it preferable because of its lower cost of adoption and better adaptability.

Other components of the risk analysis and auditing components may be more specifically related to tax administrations' particular needs, or have a lower user base, e.g. a risk analysis platform. For that purpose, governments should consider the development of individualised solutions. Although in-house development can generally be considered as preferable to outsourced solutions due to its flexibility and capability of integration, many governments may not be in position to assume software development for structural or even cultural reasons. In such cases, it may be acceptable to outsource the development or acquire COTS or OSS with a smaller user base.

# Annex I. Instruments for international co-operation

## I.1. Tax matters

### I.1.1. *Multilateral Convention on Mutual Administrative Assistance in Tax Matters – Country reservations from LAC jurisdictions*

The purpose of the MAAC is to facilitate the provision of mutual administrative assistance in the field of taxes, including VAT. However, it acknowledges that a State may not, for practical, constitutional or political reasons, be able at the time of signature to provide to other States the full assistance envisaged by the Convention.

Article 30 enables a State to sign the MAAC with reservations about the type of tax to be covered and/or the type of assistance to be provided, so that it may limit its participation in the provision of mutual assistance under the MAAC to certain taxes or certain forms of assistance. There are limits on what reservations can be made, as the MAAC allows only the following reservations:

**Table A I.1. Reservations allowed by the Multilateral Convention on Mutual Administrative Assistance in Tax Matters**

| Article                | Reservation  |
|------------------------|--|
| <i>Art. 30 (1) (a)</i> | Not to provide any form of assistance in relation to one or more taxes of other Parties.   |
| <i>Art. 30 (1) (b)</i> | Not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more specific categories.  |
| <i>Art. 30 (1) (c)</i> | Not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made, at the date of withdrawal of such a reservation in relation to taxes in the category in question.  |
| <i>Art. 30 (1) (d)</i> | Not to provide assistance in the service of documents for all taxes or only for taxes in one or more specific categories.  |
| <i>Art. 30 (1) (e)</i> | Not to permit the direct service of documents through the postal service.  |
| <i>Art. 30 (1) (f)</i> | To apply paragraph 7 of Article 28 of the Convention exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. |

Source: OECD/Council of Europe (2011), *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (OECD/Council of Europe, 2011<sup>[89]</sup>).

The MAAC makes it clear that if a Party declared that it reserves the right not to provide any form of assistance in relation to certain taxes, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation (Art. 22, paragraph 3).

The table below summarises the reservations made by LAC jurisdictions under Art. 30 (1) (a), (b) and (d) and its effects as regards of general consumption taxes (e.g. VAT) and specific taxes on goods and services (e.g. excises).

**Table A I.2. Reservations under Art. 30 (1) (a), (b) and (d) from LAC jurisdictions**

|                                     | Art. 30 (1) (a) Not to provide any form of assistance in relation to the taxes of other Parties |                                     | Art. 30 (1) (b) Not to provide assistance in the recovery of tax claims or administrative fines |                                     | Art. 30 (1) (d) Not to provide assistance in the service of documents |                                     |
|-------------------------------------|---|-------------------------------------|---|-------------------------------------|---|-------------------------------------|
|                                     | Reservation in place  | Applicable to national VAT          | Reservation in place  | Applicable to national VAT          | Reservation in place  | Applicable to national VAT          |
| Anguilla <sup>1</sup>               | <input checked="" type="checkbox"/>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input type="checkbox"/>  | -                                   |
| Argentina                           | <input checked="" type="checkbox"/>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Aruba <sup>2</sup>                  | <input type="checkbox"/>  | -                                   | <input type="checkbox"/>  | -                                   | <input type="checkbox"/>  | -                                   |
| Bahamas                             | <input checked="" type="checkbox"/>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Barbados                            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Belize                              | <input type="checkbox"/>  | -                                   | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Bermuda <sup>1</sup>                | <input type="checkbox"/>  | -                                   | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Brazil                              | <input type="checkbox"/>  | -                                   | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| British Virgin Islands <sup>1</sup> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input type="checkbox"/>  | -                                   |
| Cayman Islands <sup>1</sup>         | <input checked="" type="checkbox"/>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input type="checkbox"/>  | -                                   |
| Chile                               | <input checked="" type="checkbox"/>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Colombia                            | <input checked="" type="checkbox"/>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Costa Rica                          | <input checked="" type="checkbox"/>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |

|                                  | Art. 30 (1) (a) Not to provide any form of assistance in relation to the taxes of other Parties |                                     | Art. 30 (1) (b) Not to provide assistance in the recovery of tax claims or administrative fines |                                     | Art. 30 (1) (d) Not to provide assistance in the service of documents |                                     |
|----------------------------------|---|-------------------------------------|---|-------------------------------------|---|-------------------------------------|
|                                  | Reservation in place  | Applicable to national VAT          | Reservation in place  | Applicable to national VAT          | Reservation in place  | Applicable to national VAT          |
| Curaçao <sup>2</sup>             | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>                                   | -                                   |
| Dominica                         | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>                                   | -                                   |
| Dominican Republic               | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Ecuador <sup>3</sup>             | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>                                   | -                                   |
| El Salvador                      | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | -                                   |
| Grenada                          | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>                                   | -                                   |
| Guatemala                        | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Jamaica                          | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>                                   | -                                   |
| Mexico                           | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Montserrat <sup>1</sup>          | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | -                                   |
| Panama                           | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Paraguay <sup>4</sup>            | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>                                   | -                                   |
| Peru                             | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Saint Kitts and Nevis            | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Saint Lucia                      | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Saint Vincent and the Grenadines | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |
| Sint Maarten <sup>2</sup>        | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | -                                   | <input checked="" type="checkbox"/>                                   | -                                   |
| Turks and Caicos <sup>1</sup>    | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | -                                   |

|         | Art. 30 (1) (a) Not to provide any form of assistance in relation to the taxes of other Parties |                            | Art. 30 (1) (b) Not to provide assistance in the recovery of tax claims or administrative fines |                                     | Art. 30 (1) (d) Not to provide assistance in the service of documents |                                     |
|---------|---|----------------------------|---|-------------------------------------|---|-------------------------------------|
|         | Reservation in place  | Applicable to national VAT | Reservation in place  | Applicable to national VAT          | Reservation in place  | Applicable to national VAT          |
| Uruguay | <input checked="" type="checkbox"/>   | <input type="checkbox"/>   | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/>                                   | <input checked="" type="checkbox"/> |

1. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos. The application of the MAAC has been extended by the United Kingdom pursuant to Article 29.

2. Aruba, Curaçao and Sint Maarten. The application of the MAAC has been extended by the Kingdom of the Netherlands pursuant to Article 29.

3. Ecuador. The jurisdiction reserves the right not to permit the service of documents though the post, according to Art. 30 (1) (e) of the MAAC.

4. Paraguay. The jurisdiction has signed the amended convention but not deposited the instrument of ratification, acceptance or approval.

Source: OECD analysis, based on OECD/Council of Europe, *Reservations and Declarations for Treaty No.127 – Multilateral Convention on Mutual Administrative Assistance in Tax Matters* (status as of April 2021) (OECD; Council of Europe, n.d.<sup>[105]</sup>).

### 1.1.2. OECD Model Agreement on Exchange of Information on Tax Matters<sup>157</sup>

A Model Tax Information Exchange Agreement (TIEA) was released by the OECD in 2002.<sup>158</sup>

#### Scope

The Model TIEA provides for assistance in exchange of information that is foreseeably relevant<sup>159</sup> to the administration and enforcement of domestic laws of the Contracting Parties concerning taxes covered by the TIEA (Art. 1).

Information exchanged shall include that information which is relevant for the determination, assessment and collection of taxes covered by the TIEA, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Therefore, the agreement also applies to criminal tax matters.

#### Forms of co-operation

- **Exchange of Information Upon Request (Art 5).** The Model TIEA provides the general rule that the competent authority of the requested Party must provide information upon request for the specific purposes identified by the Model TIEA in Article 1, i.e. for both civil and criminal tax

<sup>157</sup> This subsection presents a summary of Chapter 4.A.2 of the report OECD (2012), *International Co-operation against Tax Crimes and Other Financial Crimes: A catalogue of the main instruments at <https://www.oecd.org/ctp/crime/international-co-operation-against-tax-crimes-and-other-financial-crimes-a-catalogue-of-the-main-instruments.htm>*.

<sup>158</sup> See <https://www.oecd.org/ctp/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm>. Details below refer to the bilateral version unless otherwise stated.

<sup>159</sup> The standard of foreseeable relevance is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting Parties are not at liberty to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. The Agreement also uses the standard of foreseeable relevance in order to ensure that information requests may not be declined in cases where a definite assessment of the pertinence of the information to an on-going investigation can only be made following the receipt of the information (Comm. n. 4).

matters.<sup>160</sup> In connection with the latter, information shall be exchanged upon request without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

The Model TIEA includes a provision intended to require the provision of information in a format specifically requested by a Contracting Party to satisfy its evidentiary or other legal requirements to the extent allowable under the laws of the requested Party. Such forms may include depositions of witnesses and authenticated copies of original records. Under this provision, the requested Party may decline to provide the information in the specific form requested if such form is not allowable under its laws. A refusal to provide the information in the format requested does not affect the obligation to provide the information (Art. 5, para 3 and Comm. n. 44).

- **Tax Examinations Abroad (Art. 6).** A Contracting Party may allow representatives of the other Party to enter the territory of the first-mentioned Party to interview individuals and to examine records but only with the written consent of the persons concerned. The decision of whether to allow such examinations and, if so, on what terms lies exclusively in the hands of the requested Party (Comm. n. 66). At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

### *Authorities that can use the instrument*

The term “competent authority” means the authorities designated by a Contracting Party in its instrument of acceptance, ratification or approval (Art. 1 and Art. 4, para 1, let. b).

Article 5 regulates the conditions for requesting assistance while article 7 regulates the grounds for denying it.

### *Use of information received*

The competent authorities of the requesting Party may use any information exchanged under the Model TIEA only for the following purposes: assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Model TIEA. They may disclose the information in public court proceedings or in judicial decisions (Art. 8).

### *Sharing of information received*

- **With other local authorities (Art. 8).** Any information received under the TIEA shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with: (i) the assessment or collection of the taxes covered by the TIEA; (ii) the enforcement or prosecution in respect of the taxes covered by the TIEA; (iii) the determination of appeals in relation to the taxes covered by the TIEA. Such persons or authorities shall use such information only for such purposes.

The information may be disclosed to any other person or entity or authority provided the competent authority of the Contracting Party that supplied the information expresses its consent in writing.

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<sup>160</sup> Art. 4 of the Model TIEA defines ‘criminal tax matters’ as all tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party. Criminal law provisions based on non-intentional conduct (e.g. provisions that involve strict or absolute liability) do not constitute criminal tax matters for purposes of the Model TIEA. A tax matter involves “intentional conduct” if the pertinent criminal law provision requires an element of intent.

- **With foreign authorities (Art. 8).** The information may be disclosed to other jurisdictions provided the competent authority of the Contracting Party that supplied the information expresses its consent in writing.

### *I.1.3. CIAT Model Agreement on the Exchange of Tax Information*

In 2001, the General Assembly of the Inter-American Center of Tax Administrators (CIAT) approved a Model Agreement for the Exchange of Tax Information (the CIAT Agreement).<sup>161</sup> The CIAT Agreement is somewhat less detailed and prescriptive than the other models devoted in whole or in part to information exchange.

#### *Scope*

The CIAT Agreement provides that “the competent authorities of the contracting States shall exchange information to administer and enforce their domestic laws covered by this Agreement” (Article 4(1)). However, it does not specify the taxes covered, which must be expressly indicated by the Contracting States<sup>162</sup>.

#### *Forms of co-operation*

Unlike broader agreements that include all forms of mutual administrative assistance in tax matters, the CIAT Agreement is limited to the exchange of tax information.

Similarly, while the CIAT model provides that “[t]he competent authorities of the Contracting States shall regularly or automatically transmit information to each other” (Article 4(3)), it does not identify such information.

## **I.2. Criminal matters**

### *I.2.1. Model Treaty on Mutual Assistance in Criminal Matters*<sup>163</sup>

The UN Model Treaty on Mutual Assistance in Criminal Matters<sup>164</sup> was adopted by the General Assembly Resolution 45/117 on 14 December 1990. It was subsequently amended by General Assembly Resolution 53/112. Unless otherwise indicated, details below refer to the Model Treaty as amended by the General Assembly Resolution 53/112.

The Model Treaty (MT) aims at providing a useful framework for States interested in negotiating and concluding bilateral agreements to improve co-operation in matters of crime prevention and criminal justice.

<sup>161</sup> See CIAT (1999), *Model Tax Information Exchange Agreement* at <https://biblioteca.ciat.org/opac/book/803>

<sup>162</sup> Comments on the CIAT Model, Article 2, Section 1.

<sup>163</sup> This subsection presents a summary of Chapter 4.E.4 of the OECD report (2012), *International Co-operation against Tax Crimes and Other Financial Crimes: A catalogue of the main instruments* at <https://www.oecd.org/ctp/crime/international-co-operation-against-tax-crimes-and-other-financial-crimes-a-catalogue-of-the-main-instruments.htm>

<sup>164</sup> See [https://www.unodc.org/pdf/model\\_treaty\\_mutual\\_assistance\\_criminal\\_matters.pdf](https://www.unodc.org/pdf/model_treaty_mutual_assistance_criminal_matters.pdf)

## **Scope**

According to Article 1 paragraph 1 of the MT, Parties shall afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

The MT does not apply to (Art. 1, para 3): (a) the arrest or detention of any person with a view to the extradition of that person; (b) the enforcement in the requested State of criminal judgments imposed in the requesting State except to the extent permitted by the law of the requested State and Article 18 of the Model Treaty dealing with proceeds of crime; (c) the transfer of persons in custody to serve sentences; (d) the transfer of proceedings in criminal matters.

## **Forms of co-operation**

Mutual assistance may include: (a) taking evidence or statements from persons; (b) assisting in the availability of detained persons or others to give evidence or assist investigations; (c) effecting service of judicial documents; (d) executing searches and seizures; (e) examining objects and sites; (f) providing information and evidentiary items<sup>165</sup>; (g) providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

## **Authorities that can use the instrument**

Each Party shall designate a central authority or authorities by or through which requests should be made or received (Art. 3).

Article 5 regulates the conditions for requesting assistance and Article 4 the cases when assistance may be refused or postponed.

## **Use of information received**

According to Article 8, the requesting State shall not, unless otherwise agreed, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations other than those stated in the request.

Article 9b states that the requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

For its part, the requested State shall keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance (Art. 9a).

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<sup>165</sup> The requesting State would ask for information or things to be obtained and transferred to the requesting State. The legislation of the requested State should provide for the compulsory production of documents or things that might afford evidence about the offence in the requesting State. The legislation should allow for the information or objects so produced to be turned over to authorities in the foreign State, with or without conditions (paragraph 51 and 53 of the Revised Manual on the Model Treaty).

### 1.2.2. ICPO-Interpol Constitution and Rules governing the processing of information<sup>166</sup>

The International Criminal Police Organisation (hereinafter referred to as ‘Interpol’ or “the Organisation”) is the world’s largest international police organisation, with 194 member countries.<sup>167</sup> It was founded in 1923. Interpol’s structure, aims and objectives are outlined in its Constitution, the Organisation’s main legal document, which came into force in 1956. In addition to the Constitution, a number of other fundamental texts make up Interpol’s legal framework.<sup>168</sup>

Particularly relevant is the document ‘Rules governing the processing of information’ (hereinafter referred to as ‘the Rules’), entered into force on 1st January 2006, which provide for some conditions and basic procedures for processing information by Interpol itself or through its channels for the purposes of international police co-operation.

#### Scope

Interpol aims (a) to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the ‘Universal Declaration of Human Rights’ and (b) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes (Art. 2 of the Constitution). Any intervention or activities of a political, military, religious or racial character are strictly forbidden for Interpol (Art. 3 of the Constitution).

#### Forms of co-operation

Interpol provides for a wide number of co-operation instruments, namely (a) exchange of information through the General Secretariat; (b) notices<sup>169</sup> and diffusions<sup>170</sup>; (c) specialised teams and police trainings; (d) criminal intelligence analysis; (e) police trainings.

Interpol has also established several bodies for the purposes of further fostering the above described international co-operation among member countries.

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<sup>166</sup> This subsection presents a summary of chapter 4.E.7 of the OECD report (2012), *International Co-operation against Tax Crimes and Other Financial Crimes: A catalogue of the main instruments* at <https://www.oecd.org/ctp/crime/international-co-operation-against-tax-crimes-and-other-financial-crimes-a-catalogue-of-the-main-instruments.htm>

<sup>167</sup> See <https://www.interpol.int/Who-we-are/Member-countries>

<sup>168</sup> These include (a) The General Regulations; (b) Rules of the Procedure of the General Assembly; (c) Rules of the Procedure of the Executive Committee; (d) Financial regulations; (e) Rules governing the processing of information; (f) Rules on the Control of Information and access to Interpol’s Files.

<sup>169</sup> Interpol Notices are international alerts allowing police in member countries to share critical crime-related information. Notices are published by Interpol’s General Secretariat at the request of National Central Bureaus (NCBs) and authorised entities.

<sup>170</sup> This is less formal than a notice but is also used to request the arrest or location of individual or additional information in relation to a police investigation. A diffusion is circulated directly by an NCB to the member countries of their choice, or to the entire Interpol membership.

### ***Authorities that can use the instrument***

The General Secretariat<sup>171</sup>, the National Central Bureaus<sup>172</sup>, the authorised national institutions<sup>173</sup> and the authorised international entities<sup>174</sup> are authorised to use the police information system and the information transmitted thereon, provided they observe the provisions of the Rules and the texts to which they refer (Art. 1, let. c of the Rules).

### ***Conditions for requesting assistance***

The Rules set out strict conditions for processing information through Interpol's channels. This may only be carried out if specific conditions are met (Art. 10.1, let. a of the Rules). Special general conditions are set out for the processing of particularly sensitive information (Art. 10.2 of the Rules) and for the processing of notices (Art. 10.5 of the Rules).

### ***Use of information received***

According to the Rules, information<sup>175</sup> shall be processed by the Organisation<sup>175</sup> or through its channels for international police co-operation purposes in order to prevent, investigate and prosecute ordinary-law crimes, to assist with such investigations and for other specific reasons<sup>176</sup> (Art. 3.1, let. a of the Rules).

Under the Rules, information sources shall retain control over the processing rights to their items of information, in conformity with the procedures set out in the Rules and subject to any additional restrictions which may be imposed by the General Secretariat (Art. 5.4, para a).

### ***Relationship with other instruments***

The provision of information by the General Secretariat through the Organisation's channels must be carried out in conformity with the international conventions to which the sources of the information are party (Art. 17.1, let. f of the Rules).

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<sup>171</sup> The permanent departments of the Organisation shall constitute the General Secretariat (Art. 25 of the Constitution).

<sup>172</sup> In order to ensure the above co-operation, each country shall appoint a body which will serve as the NCB. It shall ensure liaison with the various departments in the country, those bodies in other countries serving as NCBs and the Organisation's General Secretariat (Art. 32 of the Constitution).

<sup>173</sup> Defined as any official public national institution or any entity legally authorised to fulfil the role of a public institution in enforcing the criminal law and which has received the express authorisation of its country's NCB to consult or provide information via the Organisation's channels within the limits set by the said NCB (Art. 1, let. f of the Rules)

<sup>174</sup> Means any entity which has concluded an agreement with the Organisation authorising it to process information directly through the Organisation's channels, as provided by the Constitution<sup>174</sup> (Art. 1, let. g of the Rules).

<sup>175</sup> 'Information' means any item of information or set of items of information (personal or otherwise, and irrespective of the sources) pertaining to constituent elements of ordinary law crimes, as defined by the Constitution, the investigation and prevention of such crimes, the prosecution and punishment of offences, and any information pertaining to missing persons and unidentified dead bodies (Art. 1, let. b of the Rules).

<sup>176</sup> This include: (a) a search for a person with a view to his arrest; (b) to obtain information about a person who has committed or is likely to commit, or has participated or is likely to have participated (directly or indirectly) in an ordinary-law crime; (c) to warn police authorities about a person's criminal activities; (d) to locate a missing person; (e) to locate a witness or victim; (f) to identify a person or a dead body; (g) to locate or identify objects; (h) to describe or identify modus operandi, offences committed by unidentified persons, the characteristics of counterfeits or forgeries, and seizures of items connected with trafficking operations. Information may also be processed for the purpose of identifying threats and criminal networks (Art. 3.1, let. b of the Rules).

### ***1.2.3. Inter-American Convention on Mutual Assistance in Criminal Matters***

The Inter-American Convention on Mutual Assistance in Criminal Matters<sup>177</sup> was adopted on 23 May 1992. It entered into force on 14 April 1996. It has been ratified/acceded by 27 States.<sup>178</sup>

#### ***Scope***

Article 2 provides that States Parties shall render to one another mutual assistance in investigations, prosecutions, and proceedings that pertain to crimes over which the requesting State has jurisdiction at the time the assistance is requested (Art. 2, para 1), other than crimes subject exclusively to military legislation.

#### ***Forms of co-operation***

Article 7 provides that assistance to be provided under the Convention shall include the following procedures: (a) notification of rulings and judgments; (b) taking of testimony or statements from persons; (c) summoning of witnesses and expert witnesses to provide testimony; (d) immobilisation and sequestration of property, freezing of assets, and assistance in procedures related to seizures; (e) searches or seizures; (f) examination of objects and places; (g) service of judicial documents; (h) transmittal of documents, reports, information, and evidence; (i) transfer of detained persons for the purpose of this Convention; and (j) any other procedure provided there is an agreement between the requesting State and the requested State.

#### ***Authorities that can use the instrument***

Transmission of requests under this Convention shall be effected between Central Authorities designated by Parties (Art. 3, para 1 and 2). They shall communicate directly with one another for all purposes of this Convention (Art. 3, para 3). Most Parties designated their Ministry of Justice as Central Authority.

#### ***Conditions for requesting assistance***

Requests for assistance shall be made in writing and shall be executed in accordance with the domestic law of the requested State (Art. 10, para 1).

Requests for assistance shall, according to Article 26 paragraph 1, contain the following details: (a) the crime to which the procedures refers; a summary description of the essential facts of the crime, investigation, or criminal proceeding in question; and a description of the facts to which the request refers; (b) proceeding giving rise to the request for assistance, with a precise description of such proceeding; (c) where pertinent, a description of any proceeding or other special requirement of the requesting State; and (d) a precise description of the assistance requested and any information necessary for the fulfilment of that request.

#### ***Grounds for denying/postponing assistance***

In principle, assistance shall be rendered even if the act that gives rise to it is not punishable under the legislation of the requested State (Art. 5, para 1). However, when the request for assistance pertains to: (a) immobilisation and sequestration of property, and (b) searches and seizures, including house searches,

<sup>177</sup> See <https://www.oas.org/juridico/english/treaties/a-55.html>.

<sup>178</sup> The list of ratifications is available at <https://www.oas.org/juridico/english/Sigs/a-55.html>.

the requested State may decline to render the assistance where there is no double criminality (Art. 5, para 2).

According to Article 9, the requested State may refuse assistance when it determines that: (a) the request for assistance is being used in order to prosecute a person on a charge with respect to which that person has already been sentenced or acquitted in a trial in the requesting or requested State; (b) the investigation has been initiated for the purpose of prosecuting, punishing, or discriminating in any way against an individual or group of persons for reason of sex, race, social status, nationality, religion, or ideology; (c) the request refers to a crime that is political or related to a political crime, or to a common crime prosecuted for political reasons; (d) the request has been issued at the request of a special or *ad hoc* tribunal; (e) public policy (*ordre public*), sovereignty, security, or basic public interests are prejudiced; and (f) the request pertains to a tax crime, nevertheless, the assistance shall be granted if the offence is committed by way of an intentionally incorrect statement, whether oral or written, or by way of an intentional failure to declare income derived from any other offence covered by this Convention for the purpose of concealing such income.

### ***Use of information received***

Information received under this Convention shall be used for purposes of investigations, prosecutions, and proceedings that pertain to crimes over which the requesting State has jurisdiction at the time the assistance is requested (Art. 2, para 1).

The requesting State may not use any information or evidence obtained in the course of application of this Convention for purposes other than those specified in the request for assistance without prior consent from the Central Authority of the requested State (Art. 25, para 1). It is further provided that in exceptional cases, if the requesting State needs to use, in whole or in part, the information or evidence for purposes other than those specified, it shall request authorisation (Art. 25, para 2).

# Definitions/Glossary of terms

**BEPS:** The abbreviation for “Base Erosion and Profit Shifting”. It refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity or to erode tax bases through deductible payments such as interest or royalties. Although some of the schemes used are illegal, most are not. Working together within the OECD/G20 Inclusive Framework on BEPS, over 135 countries and jurisdictions are collaborating on the implementation of 15 measures (the BEPS Package) to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment. The BEPS Action 1 Report includes recommendations to tackle BEPS in the VAT/GST area.

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

**BEPS Interim Report:** The 2018 report on the progress of the BEPS project, entitled *OECD/G20 Base Erosion and Profit Shifting Project: Tax Challenges Arising from Digitalisation – Interim Report 2018*.

**Business:** An entity recognised as a business for VAT purposes in national law. A business may be a legal entity, an establishment of a legal entity (e.g. a branch), or an individual.

**Business agreements:** A business agreement consists of the elements that identify the parties to a supply and the rights and obligations with respect to that supply. They are generally based on mutual understanding.

**Collection Mechanisms Report:** The 2017 OECD report on *Mechanisms for the Effective Collection of VAT/GST Where the Supplier Is Not Located in the Jurisdiction of Taxation*.

**Consumer:** Any natural person that tax authorities do not recognise as “trading” or being “in business”.

**Consumption:** Final consumption, usually by households that comprise consumers. In addition, under most VAT frameworks this term logically encompasses purchases by businesses for non-business use.

**Digital platforms:** This term is used in this Toolkit as a generic term to refer to platforms that enable, by electronic means, direct interactions between two or more customers or participant groups (typically buyers

and sellers) with two key characteristics: (i) each group of participants (“side”) are customers of the platforms in some meaningful way, and (ii) the platform enables a direct interaction between the sides. These platforms are also known as multi-sided platforms.

**Destination principle:** The principle whereby, for consumption tax purposes, internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption.

**Digital trade:** The term is used to encompass a broad range of digitally enabled sales or purchases of services, intangibles and (physical) goods that can be either digitally or physically delivered, involving both private individuals and businesses.

**Digital products/content:** The terms generally refer to intangible property (i.e. products capable of being delivered in an electronic format) as opposed to tangible property.

**E-Commerce:** The term is broadly defined by the OECD Working Party on Indicators for the Information Society as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, householders, individuals, governments, and other public or private organisations”. Unless the context of particular discussion specifies otherwise, this Toolkit utilises the term “e-commerce” interchangeably with “digital trade”.

**Financial intermediary-based VAT withholding:** Any regime or measure that makes financial intermediaries, such as banks and PSPs, responsible for collecting and remitting the VAT on payments for taxable supplies. In the context of this Toolkit, the use of the term focuses primarily on measures in which financial intermediaries collect VAT on payments to non-resident suppliers.

**Full VAT liability regime:** The phrase generally refers to a full VAT liability model for digital platforms. Under such a regime, the digital platform is designated by law as the supplier for VAT liability purposes. The digital platform is solely and fully liable for assessing, collecting and remitting the VAT on the online sales that go through the platform, to the tax authorities in the jurisdiction of taxation, in line with the VAT legislation of that jurisdiction. This liability regime is normally limited to VAT obligations only. It does not deal with any other liability aspects for digital platforms beyond VAT, such as for instance product liability.

**Guidelines:** The *International VAT/GST Guidelines*, as the OECD Council incorporated them on 27 September 2016 in the *Recommendation of the Council on the Application of Value Added Tax/Goods and Services Tax to the International Trade in Services and Intangibles* [[OECD/LEGAL/0430](#)].

**Imports of low-value goods:** Goods that are imported from abroad with a customs value below the jurisdiction’s “low-value” threshold for customs duty relief.

**Intangibles:** In the context of this Toolkit, the phrase “supplies of intangibles” refers to supplies other than supplies of goods or services, such as supplies of intellectual property rights and other intangibles.

**Non-resident supplier:** Supplier not located in the jurisdiction of taxation. The reference is to cases where the jurisdiction of taxation may have limited or no authority effectively to enforce a collection obligation upon the supplier.

**Platforms Report:** The 2019 OECD publication on *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*.

**Principles of VAT neutrality:** These principles are set forth in Chapter 2 of the Guidelines. This term refers to the basic principles underpinning the neutrality of VAT for businesses, which is a necessary corollary of the basic definition of a VAT as a broad-based tax on final consumption that is imposed in a staged collection process including taxes collected from (but not ultimately borne by) businesses. The concept of tax neutrality in VAT has a number of dimensions, including the absence of discrimination and the elimination of undue tax burdens and disproportionate or inappropriate compliance costs for businesses.

**Services:** In the context of this Toolkit, the phrase “supplies of services” refers to any supply other than supplies of goods or intangibles. [N.B. Certain jurisdictions define supplies of services to include any category of supply other than goods and so, by extension, the definition of services also includes intangibles.]

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

**The Sharing and Gig Economy:** The working description of the Sharing and Gig Economy, which the OECD outlines in its report on *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration*. This working description is:

- An accessibility-based socio-economic model, typically enabled or facilitated via advanced technological solutions and trust-building tools, whereby human or physical resources and/or assets are accessible (for temporary use)/shared – to a large extent – among individuals for either monetary or non-monetary benefits or a combination of both.

**The Sharing and Gig Economy Report:** The 2021 OECD publication on *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration*.

**VAT registration threshold:** Amount, measured in currency, of taxable supplies made within or into a jurisdiction, below which suppliers are relieved of the obligation to both register for and collect VAT.

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

This Toolkit aims to assist tax authorities in the Latin America and Caribbean (LAC) region with the design and implementation of policy reform to ensure the effective collection of VAT on e-commerce activities.

VAT is the largest source of tax revenue on average in the LAC region and LAC is one of the fastest growing e-commerce regions in the world. The main e-commerce VAT challenges relate to the strong growth in online sales of services and digital products to private consumers (“apps”, music and movie streaming, gaming, ride-hailing, etc.) and to the exponential growth in online sales of low-value imported goods, often by foreign sellers, on which VAT is not collected effectively under existing rules.

This Toolkit provides detailed guidance for the successful implementation of a comprehensive VAT strategy directed at all types of e-commerce. It is designed to help governments secure important VAT revenues and to safeguard an even playing field between brick-and-mortar stores and foreign online sellers.

This Toolkit has been produced by the OECD in partnership with the World Bank Group (WBG). This partnership also includes the delivery of editions for Asia-Pacific and Africa. The Inter-American Center of Tax Administrations (CIAT) and the Inter-American Development Bank (IDB) have contributed considerably as regional partners for the LAC region.

## For more information



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