



Commissioner Pierre Moscovici

MEETING WITH



Thursday 3 November 2016
Cabinet meeting room

Other participants:



TABLE OF CONTENT

1. Scene setter
2. Objectives
3. Speaking points
4. Defensives
5. Background
6. CV

1. SCENE SETTER

You will meet at his request [REDACTED]

[REDACTED] He will be accompanied by [REDACTED]

VAT

Amazon tried many times to set up a meeting with you, and have already met with your Cabinet in February and your services in April this year. Both meetings were positive.

Amazon outlined its business model with particular emphasis on the issues facing the SMEs on their platform representing 47% of sales. Amazon pays approximately EUR 1 billion in VAT annually. VAT compliance is difficult and becoming more difficult.

That's why they support the VAT DSM proposals including strong support for both the extension of the MOSS to B2C supplies of goods and importantly the removal of the small consignments exemption. They consider that a cross-border threshold of €10,000 would be sufficient and that this threshold would give relief to a large majority of their SMEs.

Amazon expressed an interest in participating on the VAT Expert Group, which they joined in July.

They want now to discuss with you the main aspects of the VAT e-commerce proposals.

CCCTB

We also suggested discussing our upcoming revised proposal for a corporate tax base (CCCTB), as Amazon is a big multinational which public support could be very helpful and meaningful. For them, it will prove that they are a responsible company, not engaged into any aggressive tax planning.

The Amazon position on the CCCTB is not known. [REDACTED]

2. OBJECTIVES

- Present the main elements of the upcoming VAT e-commerce proposals to Amazon and take note of their suggestion, without promising any commitment
- Explain why those reforms are pro-business and will help all companies in Europe to better take advantage of the Single Market
- Develop the advantages for Amazon of the proposal on e-publications
- Obtain Amazon's support on the corporate tax package, and specifically on the new version of the Common Corporate Consolidated Tax Base (CCCTB).

3. SPEAKING POINTS

1. VAT e-commerce package

- A VAT modernisation proposal is scheduled for adoption by the College before the end of the year.
- The proposal will include a number of elements most notably the extension of the existing VAT One Stop Shop to intra-EU supplies and imports of goods from 3rd countries in addition to the removal of the VAT exemption for importation of small consignments.
- Other simplifications will be introduced as part of the Better Regulation process arising from the assessment of the 2015 changes. A cross-border threshold will be introduced for SMEs and micro-businesses in respect of their direct B2C supplies.
- It is estimated that the proposal will reduce administrative burdens for business by EUR 2.3 billion annually and increase revenues for Member States by EUR 7 billion annually. Importantly the removal of the small consignments exemption together with the extended One Stop Shop will provide a level playing field for EU businesses that currently are at a disadvantage.

2. VAT E-Commerce Fraud

- The online commerce boosts the economy by offering new opportunities to businesses and consumers. But is also offers opportunities to fraudsters who do not comply with tax obligations. This is damaging EU businesses and State budgets.
- Together with tax authorities, internet platforms and marketplaces should ensure that they do not facilitate VAT fraud.
- The Commission is consulting all the stakeholders to investigate whether and how cooperation between tax authorities and

businesses may be improved. The contribution of Amazon will be valuable.

- The VAT e-commerce proposal will also help in the medium term by removing the small consignments exemption and ensuring that the default position for all imports is that VAT should be applied.

3. E-publications VAT proposal

- A legislative proposal on VAT rates for e-publications will be made before the end of 2016.. Our proposal will allow Member States to apply a reduced VAT rates for electronically supplied books, newspapers and periodicals. Member States would not be obliged to cut rates – this will be a matter for Member States in line with their budgetary needs and national policies.

4. CCCTB

- A business and growth friendly tax systems in place in the EU is a priority for the Commission.
- The new proposals included in the package recently adopted on 25 October aim in that direction.
- The **Common Consolidated Corporate Tax Base** would be a big step forward for companies operating in the Single Market, as it would greatly simplify tax compliance in the EU and create a better business tax environment in Europe.
- Cross-border companies will benefit from a single set of rules to calculate their taxable profits in the EU. They will be able to file a single tax return for all their EU activities, dealing with just one Member State rather than multiple tax authorities.
- In order to ensure rapid progress in the discussions with Member States, the CCCTB has been presented in two steps.

- First, Member States should agree on the common tax base within the shortest timeframe possible, so that it can be applied by 1 January 2020.
- Once the common base has been agreed, Member States should begin work on the second proposal, which provides for consolidation. Many of the most important benefits of the CCCTB lie with the consolidation aspect.
- Until consolidation is agreed, companies will have access to a simple, robust and temporary system of **cross-border loss offset** within the common base.
- The most notable change in the re-launched CCCTB is that it will be **mandatory** for all financial accounting groups with consolidated group revenues of more than EUR 750 million and remain optional for smaller and medium sized companies that would like to benefit from it.
- The Commission has also introduced two new elements into the proposal which directly support the EU's wider economic agenda:
 - **Research and development** is given a super-deduction of 50%, to encourage R&D and innovation, which are key drivers of growth.
 - It also addresses the distortive preferential treatment of debt compared to equity as taxpayers will be given an **allowance for growth and investment (AGI)** granted based on increases in their equity.
- **It is vital to get your active support in promoting the benefits of the CCCTB.** Public support from Amazon would show public opinion and Member States that our proposal is bringing solutions

to companies that operate across the EU while it would prove at the same time that Amazon is not engaged in any aggressive tax planning activities.

4. DEFENSIVES

VAT E-Commerce – Why is the Commission acting?

The current VAT Directive contains provisions that trigger the problems for the cross-border e-commerce. In order to address these issues, the VAT Directive needs to be amended. The following problems have been identified by both businesses and tax administration that create problems:

- the complexity of VAT obligations – it is been estimated that the costs of complying with VAT obligations costs up to EUR 8 000 annually for each Member State which a business supplies to. This is a significant cost for business, in particular SMEs.
- unlevel playing field – given the VAT exemption for importation of goods up to EUR 22, as well as the often non-compliance of this threshold due to the burdensome procedure for clearance of the B2C imports of goods, most of such goods enter EU without paying VAT. This puts non-EU businesses at a clear advantage towards EU businesses that are liable to charge VAT as high as 27% from the very first eurocent. There is a substantial distortion in favour of non-EU business if VAT is not applied.
- losses of VAT - the complexity of the existing system for cross border trade different for B2C intra-EU-sales of goods and B2C imports of goods leads to valuable taxable revenues losses at the level of Member States. Indeed it is conservatively estimated that between VAT foregone and losses due to cross-border e-commerce non-compliance are as high as EUR 5 billion annually and expected to be as high as EUR 7 billion by 2020.

VAT – E-Commerce Fraud

Is the Commission aware of the Joint and Several liability introduced by UK on market places in case of third party sales via such market places? Is the joint and several liability a way for tax authorities to shift the obligations to market places rather than to tackle the problems?

The Commission is aware of the developments in the UK and understands that massive non-compliance has been estimated in this field (£1-1.5 billion in 2015 to 2016) in the UK. Joint and several liability is allowed under the VAT Directive and under the current legal framework¹, market places are liable to perform "know your client" tests and to ensure that VAT numbers are displayed on their website. The rules recently introduced by UK appear to have safeguards to allow a fair application of this joint and several liability. It is in the interest of all players in the market to ensure that rules are complied with to provide a level playing field.

¹ The E-services directive

VAT and Customs *de minimis*

Will the EU follow the US example and raise its de minimis levels to \$800? This would benefit e-commerce and SMEs.

Context: with the *Trade Facilitation and Trade Enforcement Act* adopted in Feb. 2016, the U.S. raised the value of a shipment of merchandise that may be imported free of duties and taxes from \$200 to \$800. In the context of TTIP the US has proposed the EU to align on this legislation and set a high threshold for the relief from taxes and customs duties granted to low value consignments, irrespective of the origin or the place of dispatch of the goods (MFN treatment). The US argues that this measure would benefit SMEs and e-commerce.

- Increasing the VAT de-minimis would result in the EU treating imports more favourably than domestic production. This is an aspect where the EU and US systems differ, as US taxes (e.g. the sales tax) are not collected upon importation.
- Our efforts are geared towards simplification measures for collection of VAT on small consignments up to EUR 150, as foreseen in the e-commerce package.
- Raising the customs de-minimis could result in an inflow of imports from low-cost countries, if it were to be applied on an erga omnes basis, irrespective of the origin or the place of dispatch of the goods. Representatives from EU SMEs have not been asking for such a measure. As this matter is raised in the context of the TTIP, I would point to the benefits from the phasing out of tariffs for EU-US trade in goods which is expected from this negotiation.

CCCTB DEFENSIVES

How likely is it that Member States will agree on a revised CCCTB, when they could not agree on the original proposal?

- Member States supported the new approach to the CCCTB, when COM consulted them on it.
- The re-launched CCCTB reflects discussions in the Council over the past years and is adapted to take on board Member States' expectations on certain issues.
- This proposal is being made in a different political environment to the 2011 one.
- There is a new political will, driven by strong public pressure, to agree effective new tools to combat tax avoidance and enhance EU competitiveness – the CCCTB delivers on both fronts.
- Some elements of the original proposal have already been agreed and are now enshrined in the Anti Tax Avoidance Directive.

If consolidation is delayed, what is there for businesses?

- Even without consolidation, it will be simpler and cheaper for businesses to operate cross-border.
- High compliance costs, legal uncertainties and administrative burdens linked to dealing with many different national systems will be removed.
- To compensate businesses for the delay in consolidation, the Commission has proposed cross-border loss relief for entities in the same group.
- This is a simpler and temporary system which would still offer businesses cash liquidity and many of the benefits of the full loss relief under consolidation.

How will profits be distributed when it is only the common base, without consolidation?

- The common base will set the rules for calculating the tax base of a company, but then Member States will tax this base in the same way that they do today.
- The apportionment formula will only apply once the full CCCTB is in place.

5. BACKGROUND



Amazon.com, Inc. (NASDAQ : AMZN) est une entreprise de commerce électronique américaine basée à Seattle. Sa spécialité initiale est la vente de livres, mais elle s'est diversifiée dans d'autres produits, notamment dans la vente de tous types de produits culturels : disques CD, musique en téléchargement, DVD, appareils photos numériques, informatique et dans l'équipement de la maison, cloud, elle s'est aussi lancée dans la téléphonie ("Fire phone") et la livraison par drone (projet "Prime Air").

Créée par Jeff Bezos en juillet 1994, elle a été introduite en bourse au Nasdaq en juin 1997. La filiale française a ouvert en 2000. Amazon fait partie avec Apple, Google et Facebook des « quatre grands d'Internet », qu'on appelle les GAFA.

En 2014, la société employait 132 600 personnes dans le monde et a établi des sites spécifiques pour l'Europe en Allemagne, au Royaume-Uni, en France, en Italie, en Espagne et aux Pays-Bas. De nouveaux sites sont en projet pour la Pologne et la Suède.

<u>Capitalisation</u>	243,5 milliards USD (2015)
<u>Chiffre d'affaires</u>	74,452 milliards USD (2013)
<u>Résultat net</u>	275 millions USD (2013)

VAT – E-Commerce fraud: Amazon case

The non-compliance on the online commerce is reaching extremely high levels. The non-compliance takes various forms from under declaration of goods value to pure VAT fraud by non-registration of online sellers and proper accounting of VAT.

A study² for the Commission is estimating that the losses at EU level from these activities are conservatively estimated at 5 bln EUR/year, to increase up to 7 bln EUR by 2020.

Various press reports³ and campaign groups⁴ have revealed significant non-compliance from certain overseas businesses that avoid paying UK VAT on sales of goods made to UK consumers via online marketplaces. Amazon and EBay have been named in these reports as allowing non-registered foreign sellers to make VAT free sales via acting on the Amazon/EBay market place.

An association of UK retailers named RAVAS <http://www.ravas.org.uk/> denounced a VAT fraud scheme carried out by traders established outside the EU (mainly Chinese merchants) selling goods in the EU exploiting Amazon and eBay fulfilment warehouses. Those Chinese traders do not register for VAT purposes and do not pay any VAT on their supplies in the EU. RAVAS described the scheme in an open website <http://www.vatfraud.org/>.

In the UK Budget announcements of March 2016, the UK Government estimated that the amount of VAT revenue forgone on such under-declarations is amounting to £1-1.5 billion in 2015 to 2016. The response of the UK Government was twofold:

- providing more powers to the UK tax authorities to register the non-compliant foreign businesses either directly or indirectly
- allowing UK tax authorities to hold the online marketplace jointly and severally liable for the unpaid VAT on goods sold through its online marketplace.

² To be published with the proposal on VAT for e-commerce

³ <https://www.youtube.com/watch?v=W8hPnV1L3zl>
<https://www.youtube.com/watch?v=RPKKX8P7RA8>
<http://www.bbc.co.uk/news/business-34650014>
<http://www.theguardian.com/business/2015/nov/01/uk-losing-millions-vat-non-eu-sellers-amazon-ebay>
<http://tamebay.com/2015/11/chinese-ebay-and-amazon-sellers-under-spotlight-for-vat-dodging.html>
<https://www.theguardian.com/uk-news/2016/mar/16/amazon-ebay-liable-vat-sellers-budget-2016>
<https://www.theguardian.com/business/2016/jun/21/amazon-uk-reviews-chinese-traders-ahead-vat-clampdown>

⁴ <http://www.vatfraud.org/>

UK included a new legislation in the 2015 Finance Bill that makes online marketplace such as Amazon and eBay liable for VAT evaded by high-risk overseas sellers active in the UK if they do not apply due diligence measures. After a warning of the tax administrations, the platforms have 30 days to force the trader to become VAT compliant and if they are unable to do that they become liable for the evaded VAT.

VAT E-Commerce – What is included in the proposal?

The proposal has a number of different aspects in line with the commitment made by the Commission in the DSM Strategy⁵ and the VAT Action Plan⁶. Some provisions will be made in 2018 to simplify the existing MOSS system and the application of the 2015 place of supply rules for telecommunication, broadcasting and electronic services. The more significant reforms including the extension to B2C sales of goods will come into place in 2021.

The proposal is currently under inter-service consultation until 26 October, adoption by the College is scheduled for 30 November.

From 2018

The changes the Commission expects to propose in 2018 arise from the REFIT Better Regulation initiative whereby the Commission examined the implementation of the 2015 changes and is proposing improvements to come into effect at the earliest possible opportunity.

The improvements being proposed are as follows:

- A threshold will be put in place for intra-EU B2C supplies of telecommunications, broadcasting and electronically supplied services. These services are already subject to the MOSS.
- A 'soft landing' will also be introduced whereby a business who has intra-EU B2C supplies of telecommunications, broadcasting and electronically supplied services of a value of less than a certain amount can benefit of a simplification: It will be able to identify the place where the customer is located based on one piece of evidence rather than two under current law. This could be for instance a declaration by the customer.
- The invoicing and the record retention period for a business using the MOSS will depend on the rules in place in the Member State where they are located.

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192>

⁶ https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/com_2016_148_en.pdf

Therefore, they will no longer be required to comply with two different periods for keeping records: a period of 10 years for MOSS records, as currently stipulated by Union law, and a general period for the rest of its business (most of the time shorter than 10 years) as laid down by the Member State where they are located.

From 2021

The suite of reforms to come into place cover a number of different areas including simplifying VAT obligations, measures to level the playing field for EU business and increasing coordination by Member States to best ensure compliance by taxpayers.

- The successful 2015 MOSS which is currently used by 14 000 businesses (and 3 bn € of annual revenues) will be extended to all intra-EU B2C supplies of goods and services. The extended MOSS will ensure that the cost of VAT obligations for such supplies will be minimised and one of the main barriers to the digital single market will be removed. The MOSS system allows a business to account quarterly using a simple electronic return through his own tax administration in respect of all its supplies to consumers in other Member States.
- Businesses using the MOSS system will be able to apply the same rules applicable in their own Member State such as in relation to invoicing, record keeping etc. with a view to ensuring as far as practical that trading in the single market should be the same as trading within a Member State.
- A new module in MOSS will be introduced for imports of goods into the EU up to the customs threshold of EUR 150. In essence, this will enable non-EU suppliers to charge VAT up front to consumers in EU Member States and then to account for these taxes quarterly. The intention is that for consumers there will be a seamless transaction without any further customs clearance requirement from their side while at the same time VAT will be paid to Member States of destination and instances of a tax advantage for non-EU sellers will be minimised.
- In cases where the import MOSS system is not used, persons bringing goods into the EU such as postal operators and express carriers will be able to avail of a new simplified monthly return where they can declare all VAT received. They will be required to collect the VAT due at the standard VAT rate from consumers before the goods are released. Transactions not using the MOSS or these simplified schemes will require a full customs declaration.
- The intra-EU threshold introduced in 2018 will be extended to intra-EU supplies of goods in addition to telecommunications, broadcasting and electronically supplied services. It will replace existing intra-EU and import thresholds.

CCCTB re-launch

The CCCTB was proposed by the Commission in 2011 with the aim to tackle some major fiscal impediments to growth in the Single Market.

New structure

The re-launched CCCTB will consist of two proposals for Directives, i.e. a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base (CCCTB). These proposals will be adopted by the College simultaneously and as part of a single initiative.

The **proposal of 2011** for a CCCTB, which is currently pending in Council, will be **withdrawn** at the same time as the Commission adopts the new proposals for a Common Base and CCCTB.

The re-launched proposals will introduce a **2-step approach** to the long-standing initiative for a CCCTB. Thus, the CCCTB would be unlikely to come into fruition, in its entirety, without a staged approach, due to its magnitude and ambition. Tax consolidation will remain an essential element of the proposed system but the work on it will be postponed until agreement is first secured on a mandatory set of rules for the common base

New elements as compared the 2011 proposal

The proposal will include a number of **new elements**, which were announced in both the June 2015 Action Plan and the public consultation, namely:

- The system will be **mandatory** for certain companies in **groups with a total consolidated revenue exceeding EUR 750 million** that file consolidated financial statements. Furthermore, to reach a degree of coherence between the two steps (i.e. Common Base and CCCTB), companies will be required to meet the conditions for consolidation in order to fall within the mandatory scope of the Common Base (1st step).
- The system remains **optional** for companies which do not meet certain specific conditions that would bring them within the mandatory scope.

- A **super-deduction for R&D costs** will be introduced to the R&D regime of the CCCTB proposal of 2011. The baseline rule remains that R&D costs will be fully expensed in the year incurred (with the exception of immovable property). In addition, taxpayers will be entitled, for R&D expenditure up to EUR 20 000 000, to a **yearly extra super-deduction of 50%**. To the extent that R&D expenditure reaches **beyond EUR 20 000 000**, taxpayers may deduct **25% of the exceeding amount**. In the context of the wider objective of fostering growth capacities of start-ups, we could provide that taxpayers who qualify as start-ups may deduct not 50% but 100% of their R&D costs in so far as these do not exceed EUR 20 000 000 and provided that these taxpayers do not have any associated enterprises.
- A rule **against debt bias** will be included in the re-launched proposal for a Common Base, in order to neutralise the current framework that discourages equity financing. The re-launch initiative aims to tackle the asymmetry whereby interest paid out on loans is deductible (subject to some limits) from taxpayers' Common Base whilst this is not the case for profit distributions. Given the risks that such a situation entails for the indebtedness of companies, taxpayers will be given an **allowance for growth and investment (AGI)** granted based on increases in their equity, which will be deductible from their taxable base subject to certain conditions, such as measures against potential cascading effects and anti-tax avoidance rules. In this regard, it is worth clarifying that **the proposed rule takes into account only increases in equity** over a period of 10 years, instead of the entire stock. Furthermore participations in associated companies will be deducted from the AGI base.

- A scheme of **limited temporary cross-border loss offset** is included in the proposal, in order to partially make up for the absence of the benefits of cross-border consolidation during the 'first step'. There will be a possibility to consider, under strict conditions, losses incurred by an immediate subsidiary or permanent establishment situated in other Member States. This relief will be temporary since the parent company will be obliged to add back to its tax base, considering the amount of losses previously deducted, any subsequent

profits made by its immediate subsidiaries or permanent establishments. Furthermore, if this incorporation does not occur within 5 years, the deducted losses will anyway be reincorporated automatically.

- Stronger anti avoidance mechanisms transposing in the CCCTB environment the result of the recently adopted Anti-Tax Avoidance Directive in particular on the switchover clause, controlled foreign company (CFC) legislation, exit tax, hybrid mismatches and interest deductibility.

Other elements of the October package: The ATAD2 2 proposal and the Dispute Settlement mechanism.

ATAD2:

ATAD 2 will be an amendment to the Anti-Tax Avoidance Directive (ATAD) adopted by the ECOFIN Council on 20 June 2016, with respect to the hybrid mismatch rules. The hybrid mismatch rules in the ATAD tackle the most widespread forms of hybrid mismatches, but only between Member States. Therefore, the ECOFIN Council has requested the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries to provide for rules consistent with and no less effective than the rules recommended by the OECD, with a view to reaching an agreement by the end of 2016.

Hybrid mismatch arrangements exploit differences in the tax treatment of an entity (for example a partnership) or an instrument (for example a subordinated profit participating loan) or business activities (a permanent establishment) under the laws of two or more tax jurisdictions to achieve double non-taxation.

Following a clear request by Member States to cover as many hybrid mismatch situations covered by the OECD/BEPS report as possible, ATAD 2 will address a broad range of mismatches, also including hybrid permanent establishment mismatches, imported mismatches, hybrid transfers and dual resident mismatches, in both their intra-EU and third-country dimension. It should be noted that the rules on hybrid mismatches are not intended to affect the general features of a tax system. Consequently, the proposal will not be intended to address situations in which little or

no tax has been paid due to a low tax rate or the tax system of a Member State or of a third country.

Dispute Resolution Background

Following OECD BEPS and the implementation of Anti-BEPS measures in combination with enhanced transparency it will be more likely in the future that tax administrations claim to have taxing rights on the same income – i.e. there will a further increase in disputes due to double taxation.

Double taxation dispute resolution mechanisms (DTD RM) remain an area for improvement in the EU. Although there are mechanisms in place, e.g. in Double Taxation Conventions (DTCs) and in the EU Arbitration Convention (AC), statistics and feedback from stakeholders confirm that a substantial number of cases are either not submitted by taxpayers or existing procedures do not work in a satisfactory way. Based on the expectation that the number of cases will increase in the future it is crucial to improve the current tools in order to ensure that EU remains business friendly and attracts foreign investment.

The objectives are to implement improvements to existing dispute resolution mechanisms in the area of corporate taxation by expanding the scope, enhancing enforceability and making existing mechanisms more efficient. The key aim is to introduce an obligation for result, meaning that Member States have to resolve disputes if requested by taxpayers.

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