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Dympna Kelly
HMRC Indirect Tax Project Team, Room 3/35
100 Parliament Street
London SW1A 2BQ

Sent by email to: indirecttax.projectteam@hmrc.gsi.gov.uk

2 July 2018

Dear Dympna,

Re: Response to HMRC Consultation on Alternative Method of VAT Collection – Split Payment

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

The EMA welcomes the opportunity to provide respond to HMRC's Consultation. I should be grateful if you would consider our comments and proposals, which are set out in the Annex to this letter.

Yours sincerely,

Thaer Sabri

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

Annex

Q1. Do you agree that the merchant acquirer is the best placed party to effect the split of VAT from the gross payment? If not, who do you think would be best placed and why?

We do not agree that a VAT split payment model is the most cost-efficient way to recover unpaid VAT. This system would take a significant period of time to build, and is highly likely to cost several times more than the VAT HMRC estimates can be recovered through this model.

The payment cycle described in the Annex reflects the payment process for a four-party card scheme model, which is the prevalent model for the main card networks, e.g. Discover, MasterCard, UnionPay and Visa. However, it does not highlight the fact that in the vast majority of cases (if not all) the merchant acquirer will not be located in the UK (or even the EU) but in the same jurisdiction as the overseas seller. This is because the card networks run a licensing scheme where in order to provide merchant acquiring services in a country one must obtain a valid licence from the relevant card network for that country and also be regulated to provide payment services in that country (e.g. have banking licence or payment services licence). We note that the single market in the EU/EEA is not the norm across the world so most merchant acquirers will be focused on their home country, which is a limitation that does not impact merchant acquirers operating in the EU/EEA – they have a licence for the whole single market.

In order to ensure enforceability of split payments on overseas merchant acquirers HMRC would have to have in place an agreement with the relevant country to compel the split payment and/or have the card networks change their scheme rules so that they require merchant acquirers in all jurisdictions to assist with split payments.

Q2: Do you think the government's emerging thinking on a mechanism for split payment is workable? If not, how would you improve it

We do not think it is workable. It essentially requires a complete restructuring of the current UK payment model. It is likely to take significant period of time to build and based on similar projects of such scale, would likely cost well in excess of the VAT HMRC is hoping to recover.

The proposal assumes that payments do not have a cost attached. Each payment, whether it is from the customer to the merchant, or the PSP to HMRC, has a cost attached. Not only would building this system be hugely expensive, but running it would be too, as the number of transactions that involve payment for a good would essentially be doubled.

It is not clear how the PSPs will be able to distinguish between payment transactions that are for goods that fall within the scope of the proposed VAT split payment scheme (i.e. goods that warehoused in the UK but sold by non-UK sellers who have not registered for VAT), and other goods and services that fall outside the scheme (e.g. digital goods or goods and services sold by UK businesses falling below the VAT threshold for compulsory registration). This would require an extra layer of processing that currently does not exist in addition to any processing for any subsequent VAT split payment.

While the technology to split payments in order to assist with VAT collection may exist, the complexities involved are insurmountable at this stage taking into account the likely costs.

Q3: Do you think the use of the card issuer as a fall-back option would provide an effective safeguard for the mechanism by creating sufficient incentive to encourage merchant acquirers or PSPs to register with the scheme?

We do not think the use of the card issuer as a fall-back would provide an effective safeguard as:

1. Merchants wishing to avoid paying VAT can migrate to non-UK merchant acquirers and encourage and facilitate their customers to use the services of non-UK issuers or other PSPs, thereby taking themselves outside the scope of the proposed VAT split payment scheme.
2. There is no benefit to merchant acquirers setting up systems to collect VAT if issuers will do it anyway.

We are of the view that in order for the VAT split payment scheme to avoid all the PSPs involved in a transaction for online goods warehoused in the UK from relocating outside the UK, there must be effective international co-operation along the lines of the multi-national agreement on the Common Reporting Standards. This way the relevant merchants would be caught, irrespective of their and the customers' choice of PSPs. Otherwise UK PSPs will operate under a disadvantage, losing customers to non-UK PSPs, and operating with higher overhead costs due to the additional infrastructure needed.

Q4: Do you think that marketplaces, when they are involved in a sale, could have a role to play in effecting the split?

No, we do not believe online marketplaces should have a role in effecting the split as they do not normally handle funds or act as resellers (i.e. retailers) and so are subject to existing VAT rules.

Q5: Do you agree with the government's assessment of these options for determining how much should be split from the gross payment?

We are inclined to support option 1 as it incentivises merchants that fall within its scope to register for VAT. We are of the view that any VAT split payment scheme should be a scheme to encourage online merchants that warehouse goods in the UK to register for VAT and thereby exit the scheme. This would help keep the population of merchants within the scheme to a minimum and thereby help reduce the cost to PSPs.

Q6: Are there any other options you would suggest to further simplify the process of calculating the amount to be split??

No comment.

Q7: Do you think the scope of split payment should be limited to overseas sellers, or should HMRC expand the scope to include online UK businesses?

We are of the view that the scope be limited to overseas sellers who have goods located in the warehouses in the UK and have not registered with HMRC for VAT purposes. As soon as such a seller has registered with HMRC they should be removed from the split payment scheme.

Q8: What changes do you anticipate as a result of PSD2? Will the existing parties, such as merchant acquirers, PSPs, or PISPs, continue to have a role to play in the future?

We note that PISPs are statutorily prohibited from handling funds so cannot assist in splitting payments. Furthermore both PISPs and account information service providers (AISPs) are limited in what they can do with transaction data and cannot be made to share it unless there is change in PSD2 at the EU level.

Q9: Do you agree with the government's thinking regarding how errors, adjustments, and refunds could be handled? Do you think there are better ways of resolving these issues?

We do not have an opinion on this matter, provided that PSPs are not required to facilitate the handling of errors, adjustments and refunds.

Q10: If you or your organisation is involved in the development of new payment technology, how long would you estimate it would take to create a system capable of implementing any of the proposals in this consultation? How much do you think it would cost??

We estimate that practically speaking such an endeavour will take a significant period of time to build, and is highly likely to cost several times more than the VAT HMRC estimates can be recovered through this model.

Q11: Is there anything else the government can do to enable the implementation of split payment?

No comment.

List of EMA members as of June 2018:

Advanced Payment Solutions Ltd
Airbnb Inc
Allegro Group
American Express
Azimo Limited
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network Ltd
Boku Inc
CashFlows
Circle
Citadel Commerce UK Ltd
Clearsettle
Coinbase
Corner Banca SA
Ebanx
eBay Europe Sarl
Euronet Worldwide Inc
Facebook Payments International Ltd
First Rate Exchange Services
Flex-e-card
Flywire
GoCardless Ltd
Google Payment Ltd
IDT Financial Services Limited
Imagor SA
Intuit Inc.
Ixaris Systems Ltd
Merpay Ltd.
MuchBetter
Nvayo Limited
One Money Mail Ltd
Optal
Park Card Services Limited
Paybase Limited
Payoneer
PayPal Europe Ltd
PayPoint Plc
Paysafe Group
PPRO Financial Ltd
PrePay Solutions
R. Raphael & Sons plc
Remitly
SafeCharge UK Limited
Securiclick Limited
Skrill Limited
Starpay Global Ltd.
Stripe
Syspay Ltd
Transact Payments Limited
Transact24 (UK) Ltd
TransferWise Ltd
TrueLayer Limited
Trustly Group AB
Uber BV
Valitor
Vitesse PSP Ltd
Viva Payments SA
Wave Crest Holdings Ltd
Wirecard AG
Wirex Limited
Worldpay UK Limited