



Consultation Response

ONLINE SALES TAX

Date: 20 May 2022

Introduction

1. The Country Land and Business Association (CLA) is the membership organisation for owners and managers of land, property and business in rural England and Wales. As well as agriculture and forestry, our members operate nearly 250 different types of business located in the rural area.
2. The CLA welcomes this opportunity to respond to the Consultation Document Online Sales Tax: Assessing an option to help rebalance taxation of the retail sector published on 25 February 2022.

General comments

3. While we support the aim of reinvigorating the high street and an online sales tax appeared at first glance to be a good idea, discussions with members on the practicalities have led us to the conclusion it would be too cumbersome in relation to the amounts raised. We do not support the introduction of an online sales tax.
4. Business rates are a financial burden for many businesses. The government has now had at least two consultations on a fundamental review of business rates, and whilst the CLA welcomes more accurate valuations these are not fundamental reforms that will help small and rural businesses, indeed the proposals for submitting large volumes of data are both time consuming and difficult. The government needs to look at the significant drain on small rural businesses that business rates impose and reconsider the need for fundamental reform. In the absence of fundamental reform, changes to current reliefs will benefit both rural businesses and the high street. There needs to be reform of the Small Business Rate Relief so that it can be applied to more than one hereditament, and we support the Federation of Small Business's (FSB) call for the threshold to be increased to £25,000. Empty property relief needs to be available for a longer period as often premises in rural areas take longer to let and may require substantial refurbishment. A tapered 4-year rate relief is needed to aid the diversification of agricultural businesses and reduce the burden of an immediate business rates bill before the diversified business has established.
5. The consultation makes reference to complaints about the disparity of the rates burden between retailers with physical stores and those who primarily sell online. In our view, introducing a new complex tax to fund a targeted rates relief is not the correct answer to this problem. If the intention of the online sales tax is to target large corporate online retailers, then it would be more appropriate to minimise perceived corporation tax avoidance and consider imposing a premium rate of corporation tax on them to address the disproportionate tax burden. This would avoid the need for a complex new tax that could hinder rural businesses and entrepreneurial start-ups relying on the online marketplace to grow their business, whilst failing to act as a boost for the high-street.

6. The pressures on high street retailers is a complex problem and even if government decides to proceed with an online sales tax which could – subject to hypothecation - provide funds for a business rates relief, this should not be the only solution. Policies that invigorate the high street are needed. This could include encouraging local authorities to offer more free parking on high streets to encourage consumers to use the high streets rather than out of town shopping parks with free car parking or online retail.
7. It is difficult at this stage for us to assess the true impact an online sales tax will have on members that engage in some online entrepreneurial activity. Much will depend on the final design of the tax and whether it is a flat fee per transaction or a percentage-based tax. We would expect government to consult again on a more detailed proposal for an online sales tax once the policy decisions on design have been taken. There has been an increased willingness of consumers to shop online, which has benefited many rural businesses. This online shopping trend accelerated whilst shops closed during the pandemic, which when combined with concerns about social distancing deterring many from returning to use high street retailers will have a lasting impact on the vitality of the high street. There is no guarantee that the introduction of an online sales tax will encourage consumers to shop less online in favour of returning to the high street shops. There are many factors that influence this; whether suitable products are available to buy in physical stores; how close a retailer is - which is an issue in rural areas; transport, etc. This may turn out to be a tax on consumers (and indeed small businesses) in remote rural areas who may not have the choice to go to a shop (or set up a shop front). These are all factors that the Government would need to consider in the context of its overall policy objectives for the tax.
8. Whilst the consultation paper recognises the difficulties experienced by the retail sector, this is not the only sector facing difficulties in the current economic climate.
9. This consultation comes at a time of new agricultural policies enabled by the Agriculture Act 2020, changing global trade flows, need for greater environmental responsibility and climate action, and most recently extreme volatility in input costs which means that few businesses can stay the same. However, the farming industry has a history of adaptation and innovation in the face of change and challenge. Many rely on diversification of their business to help meet these challenges. They may do this by adding value to their farming outputs. This may be dairy farmers making cheese or ice cream, or fruit producers producing soft drinks and cordials, which they sell online. They may set up farm shops and have an online presence to widen their market beyond their immediate local area. Others operate wedding venues or are active in the tourism sector, providing accommodation such as B&Bs, self-catered holiday lets, campsites, or visitor attractions which rely on online bookings either through their own website or via other online platforms.
10. Regardless of the level of online activity undertaken by our members, they are invariably small businesses, mostly unincorporated, operating in a competitive marketplace. They will not have the capacity to meet the additional administrative burdens an online sales tax will impose and will need to resort to the expense of professional support to aid compliance.
11. The CLA is looking at the proposals in this consultation not only through this prism, but also through that of Levelling Up. We call on the Government to ensure that any online sales tax implemented aligns with this aim, which must include enabling the creation or maintenance of thriving businesses in rural areas.

Specific comments

12. We have the following additional comments in relation to the consultation questions, some of which we have answered together. We have limited our response to those questions which are relevant to the CLA and its members.

Scope

Question 1: Would you favour a tax for all 'remote' sales or just a subset of 'online' sales?

13. We do not support an online sales tax but if the government decides to introduce it, this should be as simple as possible and administratively easy. The easiest way to achieve this is to apply the tax to goods ordered online only and not to services, and exclude delivery charges.
14. The imposition of an online sales tax is detrimental to those who sell online, whether as new businesses seeking to keep their start-up costs low whilst growing their business or those who want to increase their market by selling to consumers beyond their immediate vicinity. Others sell online because of other restrictions. For example, we are aware of one sofa retailer who has a showroom in a commercial unit where customers can view and test out the furniture but then assists its customers to purchase through their website. This operating model was influenced by the planning restrictions which prevented the commercial unit being occupied for retail. If all these businesses fall within the scope of the online sales tax their profitability will suffer if they do not pass on the cost of the tax to their customers.
15. An online sales tax would be more straightforward if it applied to all goods ordered online. This should include all remote forms of ordering such as through apps, but not to goods ordered instore for delivery.

Question 2: How should taxable sales be defined and what would the practical implications be?

Question 3: Are there transactions that would be particularly difficult to classify as either online or remote? What are these, and how should these be addressed?

16. As we have stated in response to question 1, taxable sales should be limited to the sales of goods only. This will avoid the complexity that including services within its scope entails, including that arising from practices such as free delivery on payment of an annual membership fee; variable delivery charges; or free delivery if a specified sum is spent on goods.
17. Including services in the scope of an online sales tax would make it more complex. How would the tax apply if the initial request for services and initial payment was taken remotely but the balance paid in person? For example, a B&B room or holiday cottage is booked remotely, perhaps with a deposit paid, but the balance is paid in person. If this is included in the scope of an online sales tax then this will have an impact on members with tourism accommodation who are taking bookings online. Likewise, if there is a request for services, such as will drafting, made via a website and some instructions are taken remotely but the client goes into the office to sign the final will, there will need to be clear rules to specify how much of their services is within the scope of the online sales tax.

18. Excluding the cost of delivery from the online sales tax would mean that there is no risk of delivery costs being increased to take the online sales tax into account.
19. We note the intended aim to use the revenue from the online sales tax to provide a discount in business rates to retailers in England. If the online sales tax is restricted to sale of goods then restricting rates relief to retail properties is justifiable. However, if services are included in the scope of the online sales tax, then the relief from rates should be across the board, not just for high street retailers but including other premises such as restaurants, pubs, etc. We suggest that any resulting reduction in rates should be targeted at smaller businesses as they cannot restructure in the same way as larger businesses

Question 4: Should click and collect be exempted? If so, how?

20. We believe than any online sales tax should apply to click and collect orders.

Question 5: Should an OST be applied to all goods? Are any exemptions necessary? If so, what are these and why?

21. Sales of personal items by individuals using sites such as eBay and Facebook marketplace should be outside the scope of the online sales tax.

Question 6: How would a goods-only approach apply to takeaway food?

22. Any sales by hospitality businesses with sit-in premises should be excluded. This will avoid the inclusion of orders made though apps to be consumed on site, that have become commonplace for many hospitality venues, such as pubs.

Question 7: Do you think that digital products should be included in an OST? How should a “digital product” be defined?

23. The boundary between digital products and physical products is getting increasingly blurred. Many digital products are similar to physical products that can be bought in high-street shops, for example online magazines, e-books, games and music. However, in the context of dematerialising the economy to make better use of resources, avoid waste and avoid the carbon footprint of travelling to buy physical products (or getting them delivered), the Government will need to define ‘digital products’ to avoid unintended consequences.
24. It is also worth bearing in mind that for households and businesses in remote rural areas, the availability of digital products such as online training webinars is a major advance and can make a big difference to productivity and levelling up. The CLA is not in a position to provide a clear answer to this question, but we would like to be involved in further testing of the concept.

Question 8: How can the risk of value shifting from goods to services be reduced, for an OST that has services out of scope?

25. Please see the answer to Question 7 – this is a tricky area that requires proper modelling.

Question 9: Are there other ways you could foresee OST being avoided? How could this be defended against?

26. An online sales take could be avoided by businesses mis-declaring the nature of the sales. The tax system already includes robust compliance powers, such as information notices and inspections which could be used to investigate suspected avoidance of the tax.
27. The VAT rules include provisions to prevent anti-fragmentation of businesses to prevent artificial division of business activities to keep them under the registration threshold. These anti-fragmentation rules could be replicated to prevent avoidance of the online sales tax.

Question 10: Do you think some or all categories of services listed above (including any digital services) should be included in the scope of an OST? Would you add any additional services?

28. As we have stated above, for simplicity, we consider that all services should be excluded from an online sales tax.

Question 11: To what extent do businesses currently distinguish between their sales of goods and services in business systems? On what basis do they currently make this distinction?

29. We are not able to comment on the systems businesses use.

Question 12: Do you agree that an OST should be designed to exclude B2B sales?

30. Yes: we believe that all business-to-business transactions should be outside the scope of the online sales tax. The need for simplicity would suggest that there should be no requirement for retailers to distinguish between goods purchased by consumers and those purchased by businesses. However, this would mean that our members would be paying an online sales tax (particularly if the seller passes the cost of the tax on to its customers) on any business inputs ordered online, such as fertiliser. This would impact their profitability. Accordingly, we believe that an online sales tax on goods should only apply to the sale of the final product to the end purchaser so that the online sales tax is not applied at each stage of the supply chain. For these purposes, a final product would not be any item or component that needs to be changed or incorporated into something else and thus would exclude all raw materials.

Question 13: Do you agree that an approach of removing all B2B transactions from scope would be preferable to applying the tax according to the individual transactions (e.g. according to the use of the item sold)?**Question 14: What is your preference from the above or any alternative approaches to exclude B2B sales from an OST while limiting administrative burdens on business?**

31. Yes. We believe it would be difficult to apply an online sales tax using a test based on the use of an item as there will be items that could have either a business or personal use depending on the purchaser and their reason for the purchase. For example, a vacuum cleaner may be purchased by a tradesman who uses it to clean up after undertaking works in someone's home or it could be purchased by a consumer for domestic use. Similarly, a business may purchase coffee machines or kettles for use in the office, or by guests in a holiday let business but they are also domestic items

used by consumers in their homes. A retailer would not know the use to which an item is put and would not normally need to consider this. It is for a business purchaser to be able to demonstrate the business use of a purchase to be able to treat the cost as tax deductible business expenditure and recover the associated VAT.

32. If the decision is taken to include business-to-business transactions, then to avoid the costs being passed down the supply chain, businesses must be able to reclaim any online sales tax paid in the same way as they can claim their input VAT and only pay to HM Revenue and Customs the difference between their input tax and output tax on sales.

Question 15: How do you think a business should be defined for the purposes of an OST?

33. A business should be one registered as such with HMRC, regardless of the vehicle used, so that unincorporated businesses such as sole traders and partnerships are included in the definition of a business as well as companies and limited liability partnerships.

Question 16: Are there other types of entities or transaction types which should be out of scope of an OST e.g. online sales by charities, public bodies or consumer to consumer transactions?

34. Membership organisations and charities should be outside the scope of an online sales tax. Most charities and not-for-profit membership organisations recruit members through their websites as well as remotely, such as over the telephone or videoconference meetings. An online sales tax would represent an additional financial burden on the organisations which they would have to service from their income instead of using this to provide member services. They would be unable to pass on this additional cost though higher membership fees as this may deter would-be members.
35. Charities that undertake online retail operations do so to raise revenue to support their charitable activities. Many of their transactions would be of a low value, and the revenue a small proportion of their total turnover. As such the administrative and financial burden of an online sale tax would be disproportionate.

Design

Question 17: Do you agree that an OST would be levied on vendors?

36. Yes, it is simpler to impose the tax on vendors, although there is a strong possibility that many businesses will choose to pass this on as an additional cost to consumers, rather than account for this as a business overhead in the same way as businesses would normally account for business rates. This then becomes a tax on hard-pressed consumers.

Question 18: How should different intermediaries that sell online on behalf of other businesses be treated with respect to an OST i.e. online marketplaces, franchises, auctioneers, agents and commissionaires?

37. If the online sales tax was imposed on intermediaries, whilst their turnover may be over any threshold to bring them within scope, there is a danger they would pass on the online sales tax to small businesses using the platforms to bring their products to market. We would also be concerned if imposing the tax on intermediaries led to double taxation, because a retailer using the platform was charged the online sales tax in addition to the tax being imposed on the intermediary in respect of the same sales. It may be preferable to impose the online sales tax on the profits of intermediaries rather than the value of transactions made through their online platforms if this minimises the risk of these intermediaries either levying or passing on the tax (in their fees) on the sales of a business which is below the threshold.

Question 19: Are there situations in which it is not possible to distinguish the vendor from the intermediary, or in which the intermediary plays a crucial role in the sale? How should these be treated?

38. We are not aware of any such situations.
39. We are aware that many small businesses will set up an online presence to sell their goods using an intermediary such as Shopify. Whilst they may use this platform for their online 'shop' it will bear their own business name and so the consumer will be unaware that an intermediary is involved.
40. For thousands of small or nano businesses, intermediaries provide a platform that enables them to access consumers that would not otherwise have discovered them, and they would never have a high-street presence. For example, many members will use an intermediary that acts as an aggregator and payment platform (Etsy, Pitchup, Airbnb, cottages.com). An online sales tax would need to be framed in the right way to avoid any unintended consequences that penalise small businesses that use intermediaries to reach consumers, such as the intermediaries passing on the costs of the online sales tax to them.

Question 20: Are there circumstances in which it would be appropriate for an intermediary to be liable for an OST, rather than the underlying seller? What are these?

41. If the tax is to apply to the sales of all goods for delivery to UK residents, the intermediary should be responsible where they are sold by a trader located outside the UK.

Question 21: How would an OST define UK customers?

42. A UK customer could be identified as one where the delivery of goods ordered is to an address in the UK or where their means of payment is linked to a UK address.

Question 22: Should UK-based intermediaries play a role in identifying taxable transactions or be made liable in some cases?

43. See our answer to question 20 above.

Question 23: Would either a revenue or a flat fee approach have a greater distortive impact on consumer behaviour? What are the scope and design considerations that would lead to distortion caused by both models?

Question 24: Would either approach be particularly preferable? If so, why? Are there any preferences around scope (i.e. different exclusions or exemptions) which would make one of the approaches more preferable?

Question 25: Do you have experience to share of overseas' taxes on online sales using either model, or similar approaches not covered above?

44. An online sales tax that is calculated as a percentage of the total revenue generated by online orders would be more straightforward. If online retailers passed the cost of this on by adding an additional charge that reflects the amount of the online sales tax, this may make consumers consider in-store purchases for higher value items, such as furniture, electronics. But this has disadvantages as there may be a more restricted choice in-store and an increased carbon footprint.
45. Depending on the level at which a flat fee per transaction is set, this could be disproportionate for lower value transactions. This disproportionality could be avoided if transactions below a de minimis amount were excluded from the tax, although this would create more complexity for the retailer. However, this may encourage consumers to split their purchases, if feasible, to keep the transaction value under the de minimis threshold.
46. We do not have enough data to provide further comments.

Question 26: What factors should be taken into consideration in setting an allowance? How would this differ for revenue and flat-fee models of an OST?

47. Any allowance set should be sufficient to exclude small businesses as only larger businesses would be able to afford the compliance involved. If the allowance is too low, there a danger that the online sales tax will stifle small businesses operating in rural areas. The threshold should recognise that many small cottage-based industries sell online as this may be their only way to reach a wider customer base.

Question 27: What would be a reasonable OST threshold and allowance to set in order to protect small businesses while also making sure the OST generates sufficient tax revenues?

48. If an OST goes ahead, we agree with the recommendation by the FSB that in the first instance there should be a small business exemption rather than an exemption threshold based on the value of online sales or volume of transactions. Many new entrepreneurial businesses rely on online sales to get established and if their only sales are online, the impact of a threshold that is set at too low a level will be to stifle growth of the business if they act to maintain sales below the threshold.
49. The business models involving online sales vary significantly so none of the suggested thresholds in the consultation document would cover small businesses adequately. The precedent this could be modelled on is the small business exemption for the off-payroll working rules which is based on the definition of small business in section 382 of the Companies Act 2006. The purpose of the exemption for off-payroll working is to reduce the administrative burden on small businesses. This should also be the objective for any exemption or threshold for an online sales tax.

50. For the off-payroll working rules, a small company is exempt from these rules if it meets 2 out of 3 conditions in section 382:
- It has a turnover of not more than £10.2 million
 - It has a balance sheet total of not more than £5.1 million
 - It has no more than 50 employees (this is the average in a financial year and the Companies Act does not specify if full-time or part-time)

As with the off-payroll rules, unincorporated business should only need to meet the turnover test.

51. Our only concern with this test is that the section 382 thresholds have not been updated to reflect inflation since 2015. Not updating these thresholds may mean diversified farming companies with large balance sheets because of the value of the farmland held may not meet this or the turnover tests and be within the scope of the tax even though their online sales are relatively low. This could be countered with a separate limit for online sales so that if a business is outside the small business exemption they are not within scope of the online sales if these below a specified limit or percentage of total turnover.

Question 28: Do you agree that an OST threshold or allowance should apply once to all businesses under common control?

52. If the online sales tax is to apply to all businesses under common control, then what is meant by common control will need to be clearly defined. We can see that it is easier with corporate groups where there are subsidiaries controlled by the parent company. It is less straightforward for unincorporated business where there may be common ownership of assets but different businesses operating under different control. This is not uncommon among rural businesses that have diversified. For instance, the assets may be owned by one generation, with the parents operating a farming business through a partnership, but one or more of their children may be running a diversified enterprise such as a cheese making or holiday business. They may have a separate partnership for the new activity. Often the wife will be in partnership with a child who does not want to go into the farming business but is interested in the holiday business and they run that together, even though the parents remain the owners of the accommodation. If the parents are farming, they may bring their children into the partnership and the children focus on new entrepreneurial activities.

Question 29: Do you agree the threshold or allowance would apply to individual businesses when they operate franchises or sell through online marketplaces?

53. Yes, although we would be concerned if online marketplaces, such as Amazon Marketplace or eBay, passed on the online sales tax to the small businesses that sell through them in the fees charged to use their services. Our concern is because there is a precedent; according to the FSB, the digital services tax is passed on to small business users in this way.

Question 30: Do you consider there to be strong arguments either for or against quarterly or annual reporting? If this hinges on any of the design options laid out in this consultation, please specify which options and why.

54. Annual reporting would be less burdensome for business.

Question 31: Can you provide insight into the overall burden to administer all systems and processes required to support an OST? Do systems currently allow you to identify the features listed above; if so, please provide further details on how this distinction can be made.

55. We have no comment.

Impacts

Question 32: On balance, what would the impact be of an OST with business rates reductions on the scale described above, including on retailers that operate both online and offline?

56. There are so many permutations on scope and approach, and our members' businesses are so varied that we cannot model the impact. Beyond an initial estimate of what an online sales tax could raise we note that the government has yet to undertake a detailed impact assessment that considers the burdens on businesses or how this will affect consumer behaviours. Such an assessment should be followed by a consultation on the assessment results and the design of the tax.

Question 33: Do the potential revenues from such a tax justify the additional administration that it would require of businesses, as well as the design complexities detailed in the previous sections?

57. It is clear from the consultation that this will necessarily be a complex tax to implement. It will impose burdens on business within the scope of the tax, and potentially on hard-pressed consumers if the tax is passed on as additional charges or in higher prices. These all make it harder to justify a new tax that is only estimated in the consultation document to raise £1bn a year.

Question 34: To what extent do you think an OST would impact innovation, efficiency and productivity?

58. If the online channel is more expensive, the tax could stifle the growth of innovative businesses if set too high. We would be concerned if an online sales tax prevented members' businesses from diversifying into new enterprises utilising online platforms.

Question 35: To what extent do you believe that an OST would impact consumers' behaviour in favour of in-store retail?

59. It has become more common for consumers looking for a particular product to conduct research into what is available and at what price online, rather than taking the time to undertake such research by wandering round various physical retail stores, as in the past. If someone was looking at a particular product online, they would perhaps look at other options on other websites, and we would not expect the online sales tax to prevent them buying online. In some instances, to purchase the requisite item they may have no choice but to order online as many retailers offer items on an online-only basis alongside products that are available in stores. As we have mentioned in our response to question 26, this is a particular problem for people in rural areas who may not have the option to purchase any required items from local retail stores.

Question 36: How do you expect online retail to evolve in the coming decade and how should an OST take account of these?

60. Although a large proportion of the population are familiar with online shopping, something that has increased during the pandemic, there will still be some businesses that have not ventured into the digital marketplace. This may be because of hesitancy from older business owners, and we would expect this to change when the next generation takes a more active role in the business and seeks to innovate to increase business income. As such we would expect more businesses to expand into online marketplaces.

Question 37: What is the evidence for the degree of pass-through of the cost of an OST to consumers? To what extent will this vary depending on the type and value of the goods sold?

61. We are not able to provide any evidence for an online sales tax specifically. However, whether a retailer chooses to pass on the costs of the online sales tax and whether they pass on the full cost is not predictable. Some will pass on a lower percentage than others in order to maintain their market share. Depending on how the tax is framed, smaller businesses selling lower-value items may not be able to do that. Online sales have introduced a far larger degree of competition. Far bigger stores would be required to enable retailers to stock the full range of products a retailer may offer through their websites. Larger retailers may make adjustments as a result of an online sales tax, but we would not expect them to radically change the way they use online sales and markets. If retailers pass on the cost of the online sales tax this should be in a transparent manner and customer receipts and invoices should specify the amount of any online sales tax charged in a similar way to the way VAT has to be itemised.

Question 38: Do you have any data which would support the Government in making an assessment of the incidence of the tax or its distributional impacts?

62. We have no data that would assist.

Question 39: In your assessment, what would be the distributional impact of an OST? Are there particular groups who are likely to be worse affected than others? How would this change if an OST were applied as a flat-fee per transaction (or some other similar metric) versus a percentage of firms' revenue from online sales?

63. In our view the imposition of an online sales tax, if the cost of this was passed on to purchasers, would penalise those who have no choice but to opt for making purchases online for delivery. Such purchasers may have mobility or other issues that keep them in the home, be without their own means of transport, or live too far from the seller/retailer to shop or collect in person. This would be of relevance to members who rely on ordering goods online because they live in rural areas and have no other reasonable options. There is therefore some read-across with the levelling up agenda that Government will want to consider.

Question 40: What environmental impact might an OST have? How would its design affect an OST's environmental impact?

64. We are not in a position to assess the environmental impact an online sales tax will have. In assessing the impact, any reduction in carbon emissions and pollution from

fewer deliveries will need to be balanced against an increase linked to transport for consumers to visit in-store retailers. This is for Government to model, and it must do so if it decides to take the OTS concept to the next stage of policy development.

For further information please contact:

Louise Speke
Chief Tax Adviser
CLA, 16 Belgrave Square, London SW1X 8PQ

Tel: 020 7235 0511
Email: louise.speke@cla.org.uk
www.cla.org.uk