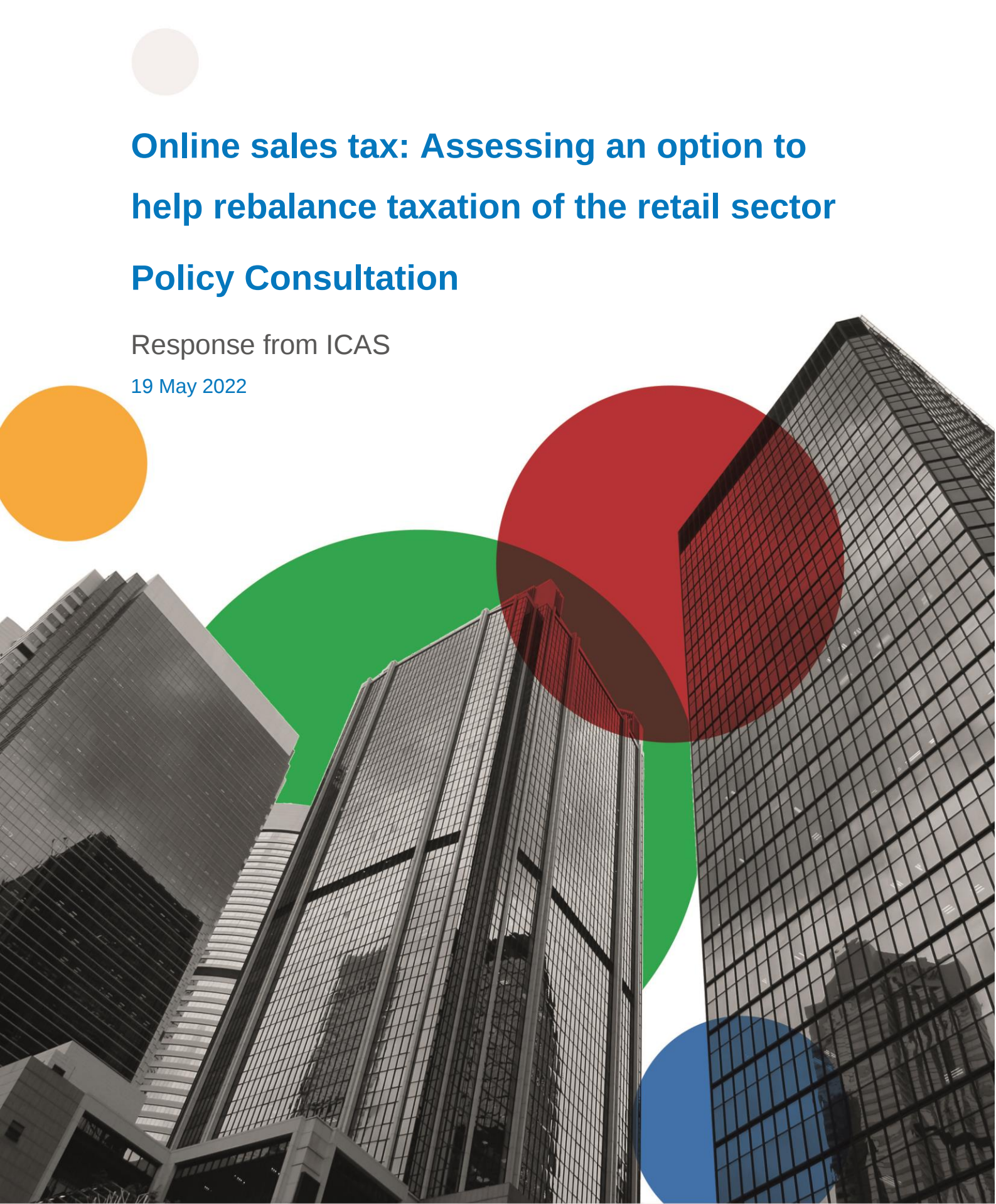




Online sales tax: Assessing an option to help rebalance taxation of the retail sector

Policy Consultation

Response from ICAS

19 May 2022

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to contribute to the consultation, '[Online sales tax: Assessing an option to help rebalance taxation of the retail sector](#)' issued by HM Treasury on 25 February 2022.

Rebalancing the tax system

5. The consultation foreword notes that some stakeholders have called for an Online Sales Tax (OST) to rebalance the tax system by funding relief for the retail sector. However, as the foreword goes on to state, it is increasingly challenging to distinguish between online and offline activity and many businesses operate both in-store and online. The pandemic accelerated existing trends, so that the retail sector has changed significantly in the last two years. It seems highly likely that change will continue, and the picture will look different again after another 12 to 24 months. Even if an OST could be designed to fit current circumstances, it seems unlikely that it would remain fit for purpose for long.
6. Rather than trying to react to changes with a 'quick fix' OST, which could, at best, only tackle one aspect of the perceived problem, it would be preferable to look at the bigger, longer-term picture. There is ongoing evolution in how business is conducted, and the fundamentals of the tax system (including business rates) also need to evolve. Anything put in place now should be part of an overarching framework with the flexibility to adapt as the landscape continues to change. Similar issues can be seen with the international tax system, which has not kept up with economic and business developments – prompting the current attempts at reform, driven by the OECD and its two-pillar proposals.
7. There is an unhelpful lack of clarity around the objectives and intended targets of a possible OST. The aim seems to be to level the playing field between online and bricks-and-mortar retail by compensating for problems in the business rates system but, given the range of business models which already exist, it is not clear that this is a realistic objective even in the short term – or one that could be achieved through an OST.
8. As the consultation itself notes, arguments for an OST focus on the cost of rent and rates but do not consider other costs associated with online retail models such as delivery networks, marketing and technology. It is also difficult to assess the likely impact of an OST on mixed-channel businesses – this would vary depending on the decisions taken around design and scope. It is difficult to reconcile the statement in paragraph 1.16, that the government does not see an OST as 'a measure to discourage consumers from shopping online,' with the actual proposals.
9. The consultation also notes the risk that if business rates for retailers are reduced, rents will increase – removing or reducing any benefit for high street retailers who do not own their premises. If there is a strong possibility of this happening, it would undermine what appears to be the main argument being advanced in favour of an OST. Further work should be undertaken to assess how far the main beneficiaries of an OST would be landlords rather than retail businesses.

Complexity and administrative burdens

10. The consultation provides a detailed analysis of how complex an OST would necessarily be. As the questions in Chapter Two illustrate, whilst the concept of taxing 'online' retail might sound straightforward, in reality it would be difficult to define what would be taxed and difficult for businesses to administer. For example, we agree with the suggestion in paragraph 2.50 of the consultation that business to business (B2B) sales should be excluded from an OST, for the reasons given. However, as the subsequent paragraphs make clear, this would be complex to administer for businesses with mixed sales – and potentially open to manipulation.
11. Further issues are identified in Chapter 3. Given the stated aim of rebalancing the tax system, it would be a reasonable assumption that the OST would apply to large online marketplaces. However, paragraph 3.40 proposes that it would be inappropriate to aggregate online sales, either by franchisees or through a marketplace, in determining whether a business should be subject to an OST – instead, it should be determined on the basis of the individual businesses' activities. We agree with the reasoning behind this proposal but the outcome, of reducing any OST paid by large online marketplaces, seems to run counter to the overall stated aim of introducing an OST. This seems indicative of the lack of clarity around the intended targets of an OST.
12. An OST would not simplify the tax code and would certainly increase burdens on businesses – on top of other changes, for example, the plastic packaging tax, Brexit-related changes to customs and excise and the Health and Social care levy. It is undesirable to create a new tax (essentially to try to address problems with another tax, ie business rates) which would require associated data systems and review processes, and would be costly and time consuming to administer.
13. There would inevitably be pressure to replicate some of the reliefs and exemptions in the VAT regime, in an OST, to protect some vulnerable consumers; this would add to complexity. For example, some reliefs from VAT are available for disabled and older people. We discuss this further in our response to Question 39.

VAT

14. As set out above, there is a risk that using revenues from an OST to reduce business rates for retailers would not, in practice, assist many high street retailers. Other forms of support for high streets might be more effective. However, if the government decides that revenues are required, either to reduce business rates, or to fund other forms of support for the high street, we suggest that using the VAT regime should be considered as an alternative to an OST. Businesses are already familiar with operating VAT and have the necessary systems in place. Adjusting the VAT regime to raise additional revenues from the provision of certain goods and services would be simpler to administer than an OST.
15. Additionally, using VAT rather than an OST, would mean that some of the issues raised in the consultation would not arise. For example, VAT deals with the issues raised around B2B sales, and it includes a threshold which keeps very small businesses out of scope. As far as possible, existing VAT categories and definitions could be utilised to minimise the creation of new areas of uncertainty. New boundary issues might be created but these are already a feature of VAT; additional HMRC resources to provide timely rulings would already be useful and would be essential if additional boundary issues were created.
16. The consultation considers whether an OST should take a revenue-based or flat-fee approach. We agree that a revenue-based approach would be preferable. Whichever approach is adopted, we anticipate that the OST (like other costs of doing business) would be passed on to consumers. VAT already uses a revenue-based approach, supporting the suggestion that using the VAT regime would be preferable to introducing a completely new tax. Post-Brexit, the UK also has greater flexibility to make changes to the VAT regime.
17. If the government does decide to proceed with an OST, it would be important to avoid the imposition of tax on tax. This currently occurs where VAT is paid on the amount subject to SDLT.

Specific questions

Chapter Two: Scope

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

18. See below – combined response to Questions 1 to 3.

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

19. See below – combined response to Questions 1 to 3.

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?

20. Combined response to Questions 1 to 3:

21. The first three questions in Chapter Two illustrate the considerable difficulties which arise from trying to determine which sales should be within scope of an OST. The consultation states that “the definition would need to be transparent and easily understood so that it was straightforward for taxpayers to work with” It is unlikely that this could be achieved, due to the range of different sales and ordering processes which already exist. We anticipate that more will emerge.
22. Businesses increasingly operate through mixed channels – as illustrated by the examples given in the questions. Attempting to identify some sales – which would be subject to an OST – would inevitably be complex and difficult to work with.

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

23. As the consultation states, not all the click and collect models identified clearly relate to the rationale for excluding such sales from an OST, set out in paragraph 2.15 of the consultation. However, attempting to distinguish between the various models would add to the complexity of an OST and increase the administrative burdens.
24. As paragraph 2.18 notes, issues would also arise from behaviour changes to avoid the tax (if similar models are treated differently) – but the revenues raised by an OST would be reduced by a general exemption.
25. The pandemic has already increased the number of click and collect models – we doubt that seven models could have been identified pre-pandemic. Other models may emerge in future, so any framework relying on distinguishing between models would be both difficult to administer and likely to be overtaken by events. An all-in or all-out approach to click and collect might be the only workable option.

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

26. See below – combined response to Questions 5 to 11.

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

27. See below – combined response to Questions 5 to 11.

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

28. See below – combined response to Questions 5 to 11.

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

29. See below – combined response to Questions 5 to 11.

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

30. See below – combined response to Questions 5 to 11.

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?

31. See below – combined response to Questions 5 to 11.

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?

32. Combined response to Questions 5 to 11:

33. We agree with the comment in paragraph 2.24 of the consultation that an OST which was only applicable to tangible goods would probably be easier to administer. Ease of administration would, however, be undermined by multiple exemptions. As paragraph 2.28 notes, if a revenue-based approach to an OST is adopted, a broad scope with few exemptions might also be more resilient against the risk of value shifting.

34. We also agree with the comments in paragraph 2.39 that extending an OST to services with no apparent in-person equivalent would be a departure from the rationale of an OST designed to help rebalance the tax system. It is arguable in the case of most of the specific services mentioned in paragraph 2.39 (financial services, utilities and healthcare) that any online offering is not competing with bricks and mortar retail.

35. We do not have any detailed comments on Questions 5 to 11 because – as set out in our general comments above – we believe that consideration should be given to using the VAT regime as an alternative to an OST, if the government decides that additional revenues are required to support the high street. Businesses are already familiar with operating VAT and have the necessary systems in place. Adjusting the VAT system to raise additional revenues from the provision of certain goods and services would be far simpler to administer than a new OST.

36. Depending on the approach adopted to adjusting VAT to raise additional revenues from certain goods and services, existing VAT categories and definitions could be used as far as possible. This would minimise the creation of new areas of uncertainty. Boundary issues are already a feature of VAT – additional HMRC resources to provide timely rulings would already be useful and would be essential if additional boundary issues were created.

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

37. We agree that B2B sales should be excluded from any OST for the reasons set out in paragraphs 2.42 to 2.50 of the consultation. This would, however, require sellers to identify which of their sales were to consumers – adding to complexity and administrative difficulties.

38. As set out in our general comments, the treatment of B2B sales provides another good reason for considering use of the VAT regime rather than the introduction of an OST.

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)?

39. See our response to Question 12 and our general comments.

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?

40. It is difficult to see how B2B sales could be excluded, without imposing significant burdens on many of the businesses trying to operate an OST. See also our response to Question 12 and our general comments.

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

41. See our responses to Questions 12 and 14.

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?

42. We have no comments on this question.

Chapter Three: Design

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

43. See below – combined response to Questions 17 to 20.

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?

44. See below – combined response to Questions 17 to 20.

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?

45. See below – combined response to Questions 17 to 20.

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?

46. Combined response to Questions 17 to 20:

47. In principle, we agree that an OST should be levied on vendors, but if smaller sellers using marketplaces (or other intermediaries) are not excluded from the OST by some form of threshold or allowance, it would probably be essential for the marketplace (or intermediary) to assist in the collection of the OST.

48. As the consultation suggests, many of the issues raised in this section are already dealt with in the VAT regime, strengthening the case for adjusting the VAT regime, rather than introducing a complex new OST, if the government decides that additional revenues are required.

Question 21: How would an OST define UK customers?

49. We have no comments on this question.

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

50. We have no comments on this question.

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?

51. We have no comments on this question.

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?

52. A revenue-based approach would be preferable, for the reasons set out in paragraph 3.20 of the consultation. It is also likely that businesses might be able to make some use of systems put in place for VAT, if a revenue-based approach is adopted.

53. Whichever approach is adopted, we anticipate that the OST (like other costs of doing business) would be passed on to consumers. VAT already uses a revenue-based approach, supporting the suggestion, in our general comments, that using the VAT regime would be preferable to introducing a completely new tax. Post-Brexit, the UK also has greater flexibility to make changes to the VAT regime.

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

54. We have no comments on this question.

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?

55. We agree that it is important to remove small businesses from the scope of an OST, due to the inevitable complexity of any OST and the difficulties associated with administering it. Small scale vendors might sell through several online marketplaces and would struggle to deal with an OST. As noted in our response to Question 20, if an OST did not include a threshold or allowance, it would probably be essential for marketplaces to assist in the collection of the OST.

56. If (as we suggest, in our general comments) adjustments were made to the VAT regime, rather than introducing an OST, a threshold for VAT registration already exists.

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?

57. See our response to Question 26.

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

58. We have no comments on this question.

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

59. Yes, it would be important to remove small businesses from the scope of an OST and we agree with the reasoning behind this proposal, as set out in paragraphs 3.38 to 3.40 of the consultation.

60. However, as set out in our general comments, the outcome of reducing any OST paid by large online marketplaces, seems to run counter to the overall stated aim of introducing an OST. This seems indicative of the lack of clarity around the intended targets of an OST.

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.

61. See our response to Question 31.

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.

62. As paragraph 3.45 of the consultation sets out, if an OST were to be implemented, it is likely that businesses would require new software, systems and data collection. The paragraph goes on to suggest that the burden could be mitigated by using data already collected by business.

63. It would be preferable to avoid imposing any additional burdens for businesses to deal with, on top of other changes, for example, the plastic packaging tax, Brexit-related changes to customs and excise and the Health and Social care levy. See our general comments above, about the possibility of using the existing VAT regime, rather than creating an entirely new tax.

Chapter Four: 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?

64. We have no comments on this question.

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?

65. See our general comments and our response to Question 31.

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

66. We have no comments on this question.

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

67. We have no comments on this question.

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

68. The pandemic accelerated existing trends, so that the retail sector has changed significantly in the last two years. It seems highly likely that change will continue, and the picture will look different again after another 12 to 24 months. As noted in our response to Question 4, models for click and collect alone have increased in the last two years – more are likely to emerge in future. Even if an OST could be designed, which would fit current circumstances, it seems unlikely that it would remain fit for purpose for long.

69. Rather than trying to react to changes with a 'quick fix' OST, which would, at best, only tackle one aspect of the perceived problem, it would be preferable to look at the bigger, longer-term picture. There is ongoing evolution, in how business is conducted, and the fundamentals of the tax system (including business rates) also need to evolve. Anything put in place now needs to be part of an overarching framework with the flexibility to adapt as the landscape continues to change.

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?

70. We have no comments on this question.

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?

71. We have no comments on this question.

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?

72. It is difficult to comment on the likely impact of an OST, in the absence of concrete proposals. The impact will vary, depending on the decisions made about design and scope. We anticipate that the cost of an OST (like other costs of doing business) would be passed on to consumers. Paragraph 4.21 of the consultation mentions that some groups might be disproportionately affected, including those who live further from a high street or shopping centre. Anecdotally, we have been told that for those living in remote areas high delivery charges are already imposed – an OST would be likely to increase costs further for these consumers.

73. The VAT regime provides for some VAT reliefs to be available for social policy reasons, as set out in VAT Notice 701/7 – Reliefs from VAT for disabled and older people. Relief is available on completion of an eligibility declaration. Imposing an OST in these circumstances could adversely affect vulnerable consumers. It would make sense to avoid this by providing for an exemption from the OST, where the VAT reliefs are available - particularly as the option of obtaining the product from a high street store might often be unavailable to these consumers.

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

74. We have no comments on this question. As suggested in the consultation, more research would be useful.

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