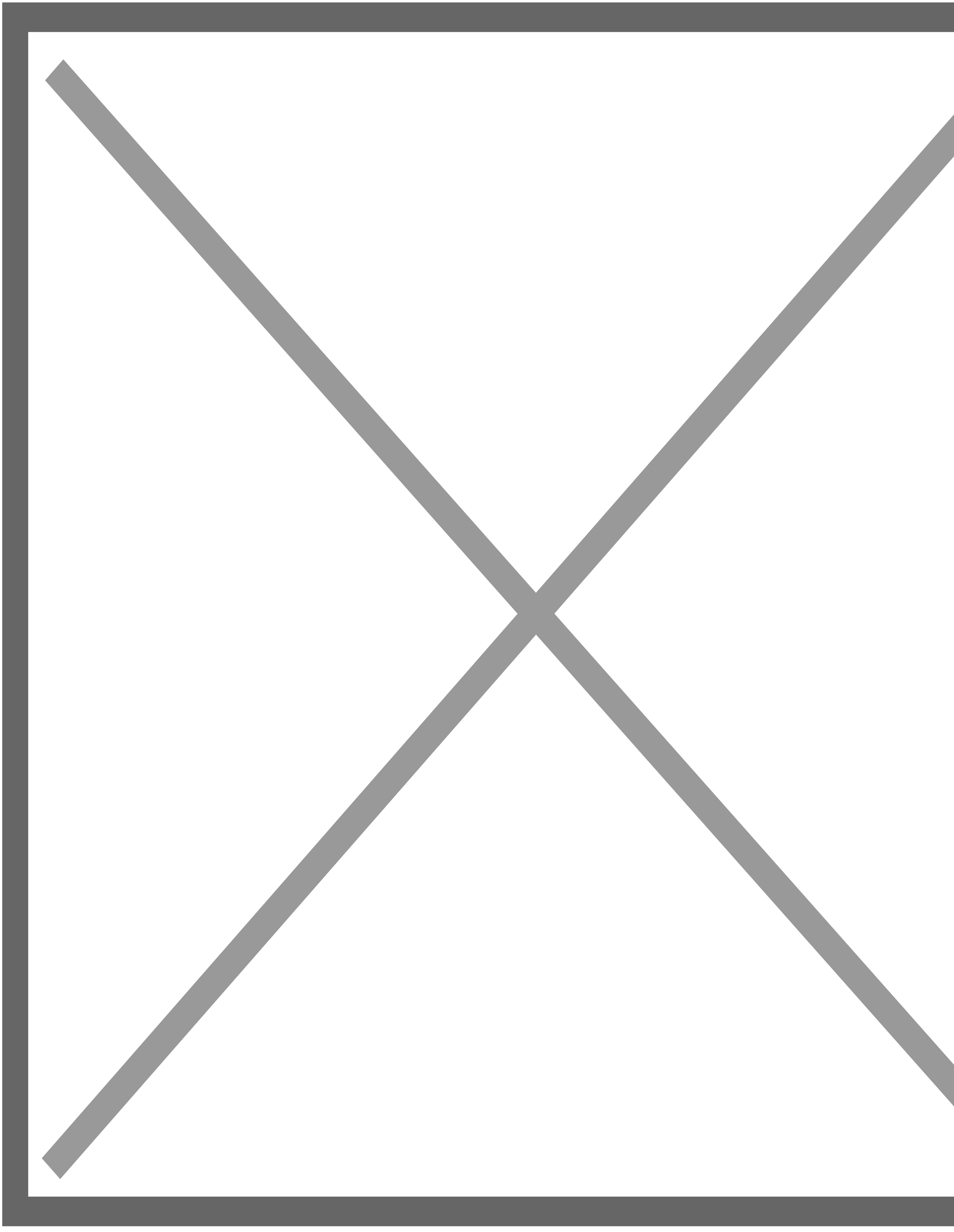
Re-sculpting the tax landscape

International Tax | Large Corporate | Management of taxes



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Rob Mander considers how e-commerce is transforming the global tax landscape and the real estate sector

Key Points

What is the issue?

The global e-commerce industry is expected to grow at an incredible rate over the next few years. The OECD has predicted that global business-to-consumer e-commerce sales would reach $4.5 trillion by 2021, a quarter of those being cross-border transactions.

What does it mean for me?

We are already seeing several countries implement new tax initiatives to try to ensure a level playing field for businesses both inside and beyond their borders.

What can I take away?

2021 will see these changes begin to solidify as the industry finds a new equilibrium and governments establish new systems and reform old processes to re-sculpt the current tax landscape.

Since the 1950s, international trade and travel have increasingly become a familiar part of our everyday lives, and innovations in technology have meant that borders are less of a barrier than ever. While the digitalisation of global commerce was already gathering pace, the Covid-19 pandemic has undeniably accelerated the shift from conventional brick and mortar businesses to online services. This comes as more consumers are now inclined to shop online to reduce their exposure to Covid-19.

Businesses that have been forced to close their physical shops due to national lockdowns and governmental restrictions have had to quickly adapt and move their services online to ensure continued sales. As a result, the global e-commerce industry is expected to grow at an incredible rate over the next few years. In fact, in 2019 the OECD predicted that global business-to-consumer e-commerce sales alone would reach $4.5 trillion by 2021, a quarter of those being cross-border transactions (see bit.ly/3akxymN). By 2022, the OECD forecast that approximately 2.2 billion individual consumers will buy goods and services online, close to a 40% increase from 2020 estimates.

An evolution of our high streets

While we are certainly going through a period of immense change, the retail sector is steeped in a history of ‘creative destruction’ which has made it incredibly resilient in times of upheaval. That said, several countries are arguably ‘over-retailed’, which has naturally led to an oversupply of stores and shopping centres in the retail real estate sector. Weak consumer demand and the complexities of innovating their online service to offer support to retail sales has seen the last decade take its toll on the retail sector.

In the UK, the first half of 2020 saw 11,120 store closures occur across the country, with even more on the horizon as the pandemic continues (see bit.ly/ 2MJOmvm). Meanwhile in the US, there were more than 5,800 closures in 2018 increasing to 9,300 in 2019, indicating the growing trend of moving away from bricks and mortar stores to online enterprises.

However, it is important to remember that diversified or omni-channel bricks and mortar businesses still hold their place in the market. While e-commerce growth is faster than retail, it still only constitutes just over 14% of total global retail sales and analysts only expect this to increase by 2% a year through to 2023. Recent findings from the OECD (see bit.ly/36vZGSy – October 2020) show that while the likes of Amazon thrived, there are indications that many other companies benefited from having large bricks and mortar stores that facilitated easy click and collect options and quick doorstep delivery.

As a result of the pressures of consumer demand, we can expect to see retail real estate gain momentum as it transforms to meet societal needs. Indeed, there are already examples in the US and Australia, where malls and empty shop spaces are being transformed into inner city warehouses and distribution centres to support the growing e-commerce industry. Meanwhile, in Japan the first steps have begun to transform an entire shopping mall into a hospital to meet the growing demand for hospital beds during the pandemic. It is this innovation, coupled with real need, that will see these spaces reimagined.

E-commerce: the impact on tax initiatives

With any large-scale economic change comes the question of how tax systems will react. We are already seeing several countries implement new tax initiatives to try to ensure a level playing field for businesses both inside and beyond their borders. At the same time, the past decade has seen governments considering the revenue produced by an increasingly digitalised economy, to ensure that digital corporations pay tax in regions where they conduct business but do not have a physical presence. The most notable examples of this are the EU's efforts to establish a new e-commerce VAT package, and the OECD's ongoing attempt to forge a universal global digital services tax initiative. However, the slow progress of international conversations, competing national interests and reluctance to compromise has seen many countries implement their own unilateral digital services tax, including the UK, Spain, Poland, Italy, France, Kenya and Australia. These unilateral taxes have prompted debate about incidence of tax – which constituency ends up bearing taxes levied on a corporation. Unsurprisingly, digital companies – like all others – will reflect taxes in their charges to consumers, advertisers and other content providers.

The added pressure of Covid-19 has served to delay global initiatives at a crucial moment, while also seeing the very firms they aim to target continue to grow their revenue. While the implementation of the EU's e-commerce VAT package has been delayed until July 2021, the OECD's discussions have also stalled until mid-2021, resulting in implementation being unlikely to occur before 2023. This paradoxical collision of global crisis and delays as digital services continue to surge in use will inevitably have a knock-on impact on the global economy for years to come.

The challenge therefore is to implement these initiatives in a way that will help to transform procedures and systems, allowing the digitalisation of our economies to continue to flourish while also providing opportunities for businesses with physical presence (often smaller and local) to compete with digitally focused enterprises, such as Amazon and Google.

VAT: EU cross-border e-commerce package

In a step to modernise VAT for cross-border e-commerce within Europe, the EU's new package promises to simplify the VAT process and reduce the administrative burden on EU businesses. When the initiative comes into effect in July 2021, businesses within the block will be able to report all distance sales of goods through a single one-stop shop (OSS) declaration, there will be no more thresholds, and the VAT exemption for suppliers outside the EU will be abolished in order to level the playing field.

Despite the changes being postponed for six months to ensure that all countries have ample opportunity to prepare, the increased digitalisation of the system and radical changes to a framework that has been thoroughly established over decades is likely to bring about protests from many over the coming months. The Netherlands and Germany have already indicated that their digital infrastructure will not be ready for these changes and have requested a further reprieve until 1 January 2022. Change was never going to be easy, but it is important that all EU countries best prepare themselves for the new rules by July.

Alongside tax reform, the EU also presented proposals in December 2020 outlining a new Digital Markets Act (see bit.ly/3aVdsj6). With this move, the EU is seeking to hold multinational businesses to account while boosting digital competition. Should these measures come to fruition, the digital platforms will have new obligations on their EU business, facing levies of up to 10% of their global revenues if they fail to comply.

Brexit: UK tax obligations are complex

Adding to these international issues, the UK's exit from the EU's Single Market and Customs Union on 1 January 2021 has created many additional challenges from an indirect tax perspective, particularly in the area of e-commerce. This comes as additional paperwork and customs declarations are required for goods being imported into the UK.

However, the UK government can be seen to have used Brexit as an opportunity to introduce new requirements to deal with VAT on goods sold to customers in the UK using online marketplaces. From January 2021, consignments of goods with a value of £135 or less that are from outside the UK and sold through an online marketplace to customers in England, Scotland and Wales will have UK VAT charged at the point of sale. The £135 limit will apply to the value of a total consignment that is imported, not the separate value of individual items that are in a consignment.

These measures will result in online marketplaces becoming liable for VAT on the goods sold on their platforms, with the exception that if these goods are being sold from Northern Ireland to a Northern Ireland customer the seller remains liable for VAT. Online marketplaces will also be liable for the VAT on goods of any value that are located in the UK at the point of sale and sold by an overseas business through an online marketplace.

For consignments valued at more than £135, import VAT will now apply to consignments arriving in the UK from the EU. To confuse matters even further, as Northern Ireland has remained in the EU Customs Union, the EU distance selling rules will continue to apply for ecommerce sales of goods from the EU to customers in Northern Ireland.

Leaving the EU has also significantly impacted UK online businesses selling to EU customers, with the additional paperwork and friction creating significant disruption and delay at the UK/EU borders. These new rules and requirements pose a major headache for both EU and non-EU operators of online marketplaces selling to consumers in the UK, with many operators now either having to register for VAT in the UK for the first time or, alternatively, closing their websites to UK customers to avoid the additional administration and compliance costs.

Conclusion

The last 12 months have seen the e-commerce sector experience a period of intense and sudden growth as businesses have sought to adapt in order to retain a sense of normality as the pandemic swept through communities across the world. Looking ahead, 2021 will see these changes begin to solidify as the industry finds a new equilibrium and governments establish new systems and reform old processes to re-sculpt the current tax landscape.