

VAT treatment of e-commerce to be simplified (2/10/20)

Given the European Commission's long-term commitment to building a final VAT system that would be simpler and more secure against fraud, businesses engaged in cross-border trade will find it easier to meet their VAT obligations from 1 January 2021 thanks to the One Stop Shop, which eases the VAT burden and removes obstacles to cross-border trade. This article explores some of the expected changes to the VAT treatment of e-commerce from 2021.

Adoption of the VAT e-commerce package began in 2015 by implementing "A Digital Single Market Strategy for Europe," a communication from the European Commission to the European Parliament. On 5 December 2017, the Council adopted Directive (EU) No. 2017/2455 (the "VAT e-commerce directive") to amend the VAT directive by -

- expanding the Mini One Stop Shop ("MOSS") to cover all types of services as well as distance sales within the EU and distance sales of goods imported from third countries or territories, thus turning the MOSS into a One Stop Shop ("OSS");
- adopting special rules applicable to taxable persons that use an electronic interface (e.g. an online point of sale, platform or portal) to facilitate particular supplies made by other taxable persons.

Rules effective from 1 January 2021

Coming into force on 1 January 2021, the second portion of the VAT e-commerce package provides for the following changes.

The One Stop Shop (OSS)

The MOSS scheme is being extended to cover all types of cross-border B2C services and distance sales (within the EU and from third countries). A business that is not established in the EU will have to appoint an entity established in the EU (an agent) to carry out VAT obligations under this special scheme on behalf of the non-established business.

The registration threshold for distance sales

The new rules abolish the current threshold and replace it with a €10,000 threshold applicable to microbusinesses. Goods or services below this threshold will be treated as supplied in the member state in which the supplier is established. A business making distance sales under the special OSS scheme will have to comply with the invoicing rules of the member state in which it is established and registered for the OSS, not the rules of each member state of destination, which is currently the case.

Distance sales of goods imported from third countries

The current VAT exemption on goods worth up to €22 imported from third countries or territories is to be abolished and replaced with a special scheme for distance sales of goods imported from third countries or territories worth up to €150. VAT on such supplies (other than excise goods) will be charged and paid by the seller himself, by the consignor, or by the seller's agent (e.g. an online point of sale or platform) after

registering for the OSS.

Goods worth more than €150 will be outside the OSS but will still be covered by the rules on “distance sales of goods imported from third countries.” So non-EU registered sellers will have to collect VAT in the member state where the transportation of goods ends (i.e. the member state of final consumption).

Online points of sale

The VAT e-commerce directive lays down special rules for electronic interfaces such as online points of sale, platforms or portals that facilitate particular supplies made by other taxable persons. If an electronic interface facilitates distance sales of goods imported from third countries or territories worth up to €150 or facilitates a non-established taxable person’s intra-Community supplies to a non-taxable person, the taxable person (electronic interface) that facilitates such supplies will be considered to have acquired and supplied those goods and will become responsible for paying VAT.

The OSS VAT return

To improve the OSS scheme, the 20-day deadline for filing a VAT return is extended to 30 days after the end of the tax period. And to ease the administrative burden on taxable persons, it is stipulated that VAT returns for past periods may be adjusted on the next VAT return, not the VAT returns for the periods the adjustments relate to.

The implications of the legal framework

Although the VAT e-commerce package offers to simplify the application and payment of VAT in cross-border trade and to ease the resulting burden, the new rules will increase the administrative burden on postal operators or courier businesses, who will have to check that the OSS VAT ID number presented by the seller of third-country goods or by his agent is valid to ensure that imports into the EU from third countries or territories under the import OSS scheme do not attract any import duties or VAT. Also, any abuse by the seller of third-country goods may create double taxation of imports.