

When does interface promoting distance sales become responsible for collecting VAT? 2/46/21



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The surge of online trading has more and more businesses not only selling their own goods but promoting sales of third-party goods through various electronic interfaces (e.g. marketplaces, platforms or portals). Under amendments to the VAT rules effective from 1 July 2021, in certain cases interfaces promoting third-party supplies are responsible for collecting VAT instead of the seller. This article explores cases in which the taxable person (interface) is considered to have acquired the goods and sold them on, becoming a deemed supplier.

A deemed supplier

Under section 6(5-6) of the VAT Act, taxable persons are considered to have received and supplied goods if they use an electronic interface to promote:

- distance sales of goods imported from third countries or third territories in consignments with an intrinsic value of up to EUR 150;
- a non-established taxable person's supplies of goods to a non-taxable person in the EU.

These provisions imply that a taxable person promoting supplies through an interface will become a deemed supplier in the following cases:

- A consignment with an intrinsic value of up to EUR 150 is supplied to a customer in the EU and imported from a third country into the EU whether the supplier/seller in the principal supply is established within or outside the EU.
- Goods that have been released for free circulation in the EU or are located in the EU are supplied to customers in the EU regardless of their value if the supplier/seller in the principal supply is not established in the EU.

Accordingly, a taxable person promoting supplies through an interface will not become a deemed supplier in the following cases:

- A consignment with an intrinsic value exceeding EUR 150 is imported into the EU regardless of where the supplier/seller in the principal supply is established.
- Goods that have been released for free circulation in the EU or are located in the EU are supplied to customers in the EU regardless of their value if the supplier/seller in the principal supply is established in the EU.

It is important to note that the interface may become a deemed supplier even if the third-country company is registered for VAT in a member state. Companies may be liable to register for VAT on various grounds (e.g. a supply of goods from a member state or a supply of services that are treated as supplied in the member state). Having a fixed establishment in a member state suggests that the company carries on a business there. A fixed establishment usually arises if the company has human and technical resources involved in doing business in the member state. From a practical point of view, interfaces might find it

difficult to obtain information required for checking whether the supplier/seller in the principal supply is established in the EU.

When an interface becomes a deemed supplier, double taxation may arise.

For example, a third-country company that is not registered for VAT in the EU acquires goods in the EU and sells them through an interface to an EU customer. The original seller is liable to charge VAT on the supply to the third-country company, and the interface is liable to collect VAT on a transaction in which the interface promotes sales of goods to the end customer in the EU. Since the third-country company is not registered for VAT in the member state in which it acquired the goods, even though the company's supply to the interface is exempt with the right to deduct input tax, the company is unlikely to be able to exercise its deduction rights unless the member state has adopted a mechanism for refunding such overpayment. The Latvian **VAT Act** makes no provision for this.

This means companies need to carefully analyse their flows of supplies and VAT treatment in order to avoid double taxation.