

November 2020

VAT e-Commerce Package 2021

On 29 October 2020, a bill comprising a suite of amendments to the Polish VAT Act and certain other acts was published by the Ministry of Finance.

The bill is to incorporate into the national law the Council Directive (EU) 2017/2455 and Council Directive (EU) 2019/1995 introducing a raft of measures jointly dubbed "VAT e-Commerce Package", the aim of which is to revamp the VAT collection system and tighten tax collection for cross-border electronic trade between companies and consumers (B2C).

The review of the key amendments, in force as of 1 July 2021, can be found below.

Amendments related to distance sales

Currently, suppliers making distance sales (i.e. cross-border trade with EU consumers, commonly referred to as B2C sales), who do not exceed the distance selling threshold set separately by every Member State may decide to charge local VAT in the country of supply. However, once the threshold is exceeded, the supplier has to register for VAT purposes and settle VAT in the country to which the goods are shipped (i.e. the country of destination).

New provisions provide for harmonization of the distance selling threshold throughout the EU, which will now amount to EUR 10k net for the total value of the supplier's B2C cross-border sales of goods within the EU (currently, the threshold applied in every Member State cannot be lower than EUR 35k nor exceed EUR 100k).

Moreover, the provisions are to bring a definition of the 'intra-Community distance sales of goods'.

Lowering the distance selling threshold will translate **into extending the group of entities making intra-Community distance sales of goods** required to register for VAT purposes in the EU countries of destination.

However, the VAT registration obligation may be waived by applying the new VAT-OSS scheme.

New special procedure: VAT-OSS

New regulations provide for extension and amendment of the MOSS scheme, currently applied to telecommunications, broadcasting and electronically provided services and introducing the One Stop Shop (OSS) solution.

Application of the VAT-OSS procedure will be optional. In this way, it will be possible to settle VAT on intra-Community distance sales of goods and on all kinds of cross-border B2C services, the place of supply of which is the Member State of consumption (up to now this was possible solely for electronically supplied services and similar of the kind).

The key advantages of using the scheme include:

- the possibility of electronic registration for VAT purposes in a single Member State (and thus avoiding the obligation to register for VAT purposes in multiple Member States to which goods or services are sold);

- settlement of VAT under a single return submitted by electronic means to the Member State of identification (yet, at VAT rates applicable in the consumer's country);
- cooperation with the tax authorities of the Member State of identification (establishment), even in the case of cross-border sales.

Distance sales of goods imported from third territories or third countries

Furthermore, the bill introduces the definition of 'distance sales of goods imported from third territories or third countries', i.e. supplies of goods from a third territory or third country to an end customer in a Member State. Currently, such sales have no separate identification, and are all perceived as imports of goods, in some cases subject to VAT exemption.

Starting from 01 July 2021, the VAT exemption on imported goods in consignments of an intrinsic value not exceeding EUR 22 will be revoked in all the EU Member States (in Poland, such exemption has been already revoked for e-commerce transactions).

For distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, the Import One-Stop Shop (IOSS) can be used to declare and settle VAT. Contrary to the current legislation on the import of goods, pursuant to which VAT is collected by customs at the time of import, under the IOSS, the supplier/ electronic interface operator will calculate and collect VAT at the time of sale of goods and then

declare and remit the globally calculated tax in the Member State of identification. Consequently, upon importation, the goods will be exempt from VAT which will allow for their immediate release by Customs (this is because under the IOSS, VAT will be collected upon the sale of goods).

The IOSS procedure will provide a range of VAT obligation simplifications to taxpayers applying the procedure, including:

- the possibility of electronic registration for VAT purposes in the Member State of identification;
- the possibility to declare and remit VAT under a single monthly return submitted in the Member State of identification.

In order to use the IOSS scheme, a taxable person not established in the Community will be obliged to designate an intermediary, the duties of whom will include settling VAT on distance sales of goods imported from third territories or third countries.

The supplier/electronic interface operator who decides not to use the IOSS will still be able to apply the other simplification scheme for the import of goods. Import VAT may be collected from consumers by the entities making the customs declaration (e.g. postal operator, delivery company), who will remit it to the customs authorities in the form of a monthly settlement (under special arrangements for declaration and payment of import VAT).

New duties in respect of VAT collection and remittance to be imposed on e-commerce platforms

Another important amendment brought about by the bill relates to entities who facilitate the supply of goods through the use of electronic interfaces, such as marketplace, platform, portal or application programming interface (API).

Such entities will be required to collect and remit VAT on:

- sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150 to EU consumers;
- intra-Community distance sales of goods or other supplies of goods to non-taxable persons, but only in situations where these transactions are carried out by suppliers not established/without the fixed establishment within the Community.

Consequently, the burden of duties attached to the supply of goods will be transferred from a considerable group of entities commonly referred to as 'base suppliers', to a significantly smaller group of electronic interface operators, who will also be obliged to keep electronic records on such transactions.

The electronic interface operators will be able to take advantage of simplified VAT settlements on the same terms as other taxpayers carrying out transactions of this kind (under OSS and IOSS schemes).

This obligation must be performed irrespectively of whether the electronic interface operator is established or has a fixed establishment in the EU territory or in a third country.

Specific provisions

The bill introduces a raft of provisions regulating the above-mentioned changes, including:

- detailed rules on VAT settlement under OSS and IOSS;
- determination of specific tax point in the case of supplies of goods via e-commerce platforms;
- determination of the place of delivery for distance sales of goods imported from third territories or third countries;
- introduction of new rules for issuing invoices for intra-Community distance sales of goods and distance sales of goods imported from third territories or third countries;
- imposition on e-commerce platforms of the requirement to keep additional records.

Further developments

The bill will progress to further legislative stages.

The planned date of entry into force of the new regulations is **01 July 2021** (the deadline for the implementation of the Directives introducing the VAT e-commerce Package is 30 June 2021).

If you would like to learn more about the issues discussed, please do not hesitate to contact us at: mampytanie@kpmg.pl

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