European Commission proposals on VAT for e-Commerce: New VAT obligations for marketplaces and Payment Service Providers

On 11 December 2018, the Commission published a proposal to amend the VAT Directive and a proposal to amend Implementing Regulation 282/2011. The aim is to ensure a smooth transition to the new VAT rules for e-commerce, which enter into force in January 2021. The proposal provides more details on when a marketplace or electronic platform is considered as facilitating a supply, hence becoming liable for VAT on the sales transaction. On 12 December 2018, the Commission published another proposal in which Payment Service Providers (PSP’s) will be required to transmit cross border payment data in order to allow tax authorities to better control the correct application of VAT on cross border supplies, particularly with respect to B2C e-Commerce transactions.

Background

On 5 December 2017, the European Council adopted the VAT e-Commerce Directive, which will bring a drastic change to VAT rules for online sales of goods and services in Europe (6 December 2017 VAT alert).

Next to simplifications to the current Mini One Stop Shop (MOSS) regime for cross-border telecommunications, broadcasting and electronic services, the new rules lead to taxation at destination and simplified declaration through a
One Stop Shop (OSS) for all cross border distance sales of goods. It also introduces a VAT liability for electronic interfaces (e.g. marketplaces, platforms) that facilitate supplies of (low value) goods imported from outside the EU or sales made within the EU by non-EU based vendors. This new legislation will enter into force in 2021.

Proposals for implementing provisions for 2021 e-commerce VAT rules

On 11 December 2018, the Commission published a proposal to amend the VAT Directive and a proposal to amend Implementing Regulation 282/2011, with the aim of ensuring a smooth transition to the new VAT rules for e-commerce, which enter into force in January 2021.

The new proposals clarify the meaning of the term ‘facilitating’, putting forward a broad ‘deemed reseller’ concept. Facilitation means the use of an electronic interface to allow customer and supplier to enter into contact, resulting in a supply of goods through that electronic interface. However, electronic interfaces are excluded from this broad definition if they are not (in)directly (i) setting the general terms of sale, (ii) involved in charging payment and (iii) involved in ordering or delivery. If the electronic interface only provides payment processing services or simply advertises the goods (potentially with a link to another electronic interface where goods can be purchased), without further intervention in the supply, they are also not considered to facilitate the supply. The complex nature of this definition will certainly lead to interpretation discussions.

Where an electronic interface facilitates a supply, VAT treatment will see it deemed as supplying the goods to the customer (as a so-called ‘deemed reseller’) if it concerns goods sent from outside the EU to a B2C customer, or from inside the EU to a B2C customer where the supplier is established outside the EU. The proposal also contains specific provisions that govern the supply chain in such case, stipulating that transport is allocated to the supply by the electronic interface rather than the supply to the electronic interface, and introducing a VAT exemption (with credit) for the supply from the underlying seller to the electronic interface.

The implementing regulation proposal also contains quite some detail on a number of practical provisions linked to the VAT e-Commerce Directive, and puts forward assumptions that benefit deemed resellers in terms of their liability. The proposal also contains new information retention obligations for electronic interfaces that go beyond their VAT liability as deemed reseller.

New tax reporting obligation for Payment Service Providers

On 12 December 2018, the European Commission published a proposal in which Payment Service Providers (PSP’s) are required to transmit payment data related to cross border supplies, where more than 25 payments by payers in their
jurisdiction to the same payee abroad are made within a calendar quarter.

Depending on the situation, the information to be reported consists of:

- IBAN or BIC-number, or any other business identifier code;
- Payee VAT identification or tax identification number;
- Payee name, address or business name;
- Information regarding the payment transaction itself, such as amount, currency, date and time, origin of payment and indication of any payment refund.

Payer identification details will not be included in the reported information to safeguard privacy.

The Commission intends to set up a new central electronic system of payment information ("CESOP") for the storage of payment information reported by PSP’s via their national tax authorities. CESOP would only be accessible to officials that are part of Eurofisc, the network of national EU Member State analysts working across different areas of fraud risk.

**Next steps**

The proposed rules will now be sent to Member States in the Council for agreement and to the European Parliament for consultation. The Commission calls for a quick agreement on the implementing proposals in 2019, as they are crucial in preparing the new VAT regime applicable as of 1 January 2021 for distance sales of goods. The new reporting obligations for Payment Service Providers are intended to enter into force on 1 January 2022.

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