VAT e-commerce Package: European Commission proposes delayed entry into force

As part of a broader postponement of EU taxation measures following COVID-19 related difficulties currently faced by businesses and Member States, the European Commission has proposed to delay the entry into force of the VAT e-commerce package by six months. The new rules, under which all B2C sales of goods to EU consumers will be taxed in the destination Member State, will apply as of 1 July 2021 instead of 1 January 2021. This will allow Member States and businesses more time to prepare for the necessary changes.

The e-commerce VAT Package

On 5 December 2017, the European Council adopted legislative proposals for a drastic change in VAT rules for online sales of goods in Europe. These rules were further completed with changes to the European VAT Directive and the Implementing Regulation 282/2011 in 2019 and were bound to be effective as of 1 January 2021.

Under these new rules, all B2C supplies of goods to customers in the EU should in principle be taxed at their destination. Their origin, whether EU or non-EU, will no longer be relevant. This brings significant change to how e commerce will be taxed going forward.
For goods entering from outside EU territory, the current import exemption for low value goods (intrinsic value below EUR 22) will cease to exist.

For supplies within the EU, the distance sales regime (with the obligation to register for VAT when generating annual sales above EUR 35,000 or EUR 100,000, depending on country) is replaced by an obligation for the supplier to apply VAT in the customer’s country when EU wide cross border B2C sales exceed EUR 10,000 per year.

VAT reporting on these supplies of goods will be simplified through the use of different ‘One Stop Shop’ reporting (OSS) systems, allowing vendors to declare and pay VAT through a tax portal in one Member State. Next to a Union OSS for cross border supplies within the EU, an Import OSS is foreseen to declare and pay VAT on the supply of low value goods imported from outside the EU, as an alternative to paying import VAT upon customs clearance of those goods.

A specific role is also foreseen for online marketplaces or platforms that will, in certain situations, be liable for VAT on B2C sales that they facilitate.

Proposed extension

The broad changes in the VAT e-commerce package have a profound impact on the business model of e-commerce vendors selling goods to EU consumers. They require significant efforts to enhance or adapt systems and processes by a broad range of businesses (marketplaces, vendors, logistics providers, postal operators, etc.), as well as Members States’ tax and customs authorities.

Due to the COVID-19 outbreak and subsequent response activity, Member States are confronted with challenges at their national level, bringing some of them difficulties in guaranteeing a timely implementation of changes required by the VAT e-commerce package in their national IT systems. At business level, companies’ readiness by 1 January 2021 is also proving difficult to achieve, particularly for postal and courier operators.

Given that provisions regarding the functioning of the VAT e-commerce package are based on the principle that all Member States should be in a position to apply them correctly, the Commission suggests 1 July 2021 as a delayed entry into force date. This also means that Member States would only have to adopt and publish national measures implementing the VAT e-commerce package by 30 June 2021 at the latest.

Impact

The proposed postponement is not surprising, given the significant change required to implement the VAT e-commerce package, particularly for imports, and the significant COVID-19 challenges.

The formal adoption of the proposal now requires the European Parliament and the EU Council’s action. While the Commission suggests a six month extension, it is possible that
certain Member States will request a longer delay; this however is unlikely to be accepted given the significant budgetary impact of the new regime for Member States.

In the meantime, it is important that both economic operators and Member States continue their preparation for a smooth adoption of the new rules. So far, only eight Member States have issued (draft) legislation to implement the VAT e-commerce package. A helpful tool in preparing for the package will be the Explanatory Notes prepared by the European Commission, in collaboration with the Member States and business community. These are expected to be published before the summer of 2020.

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