

Input VAT newsletter

New VAT rules for online businesses

11 December 2017

On 5 December 2017, the European Council adopted new VAT rules for online businesses. These new rules promote upcoming changes, resulting in these businesses facing a newly defined VAT landscape.

The new rules aim at facilitating the collection of VAT when non-taxable consumers buy **goods and services** online from suppliers established in another country and are divided by rules that will enter in force as of 1 January 2019 and 1 January 2021.

Briefly, the new rules reinforce the taxation of goods and services in the country of the non-taxable customer and the use by the businesses of the mini “one-stop” shop (MOSS), i.e. a web portal existing in each EU member state. This web portal allows businesses to pay the VAT due in the country of the non-taxable customer without having to VAT register in this country.

Additionally, the new rules align the treatment of goods and services purchased online and impose new obligations to online platforms.

The rules also promote enhanced administrative cooperation between member states to accompany and facilitate the 2021 changes. These provisions will also enter in force as of the 1 January 2021.

Measures to enter in force in 2019

A simplification measure will be introduced in 2019 for telecommunication services, television, and broadcasting and electronically supplied services (“online services”) rendered to non-taxable persons established or domiciled in another member state than the one of the provider.

These services are taxable in the member state of the customer and the supplier must pay the VAT at the rate applicable in this member state. The supplier is however not obliged to register in this member state, and could pay the foreign VAT via the web portal of its home member state, known as the mini “one-stop shop” (MOSS).

The VAT directive foresees presumptions helping businesses to determine the localization of the customer. Businesses should obtain, under certain circumstances, two items of non-contradictory evidence of the place where his customer is established or has his permanent address or usually resides.

However, the evaluation of this system indicates that it remains burdensome particularly for small and medium enterprises (SME). For these SMEs, it is foreseen, that as of 1 January 2019, one piece of evidence will be enough.

These pieces of evidence are:

- the billing address of the customer;
- the internet protocol (IP) address of the device used by the customer or any method of geolocation;
- bank details such as the location of the bank account used for payment or the billing address of the customer held by that bank;
- the Mobile Country Code (MCC) of the International Mobile Subscriber Identity (MSISDN),
- the location of the customer's fixed landline through which the service is supplied to him,
- other commercially relevant information.

This simplification measure will be available for businesses performing less than €100,000 (or equivalent in national currency), excluding VAT, of these type of services in the current and preceding calendar year. Should this threshold be exceeded during the year, the simplification measure will cease to apply as of that time and until the sales fulfill this condition.

Another measure is the introduction of a simplification regime foreseen for start-ups and small and medium enterprises. Below €10,000 in yearly cross-border online sales, a business will be able to continue applying VAT rules used in its home member state. These small businesses can however opt to have their sales taxed in the member state of their customers. This option would be of interest should the VAT rate in the member state of the customer be lower.

Measures to enter in force in 2021

As of 1 January 2021, the existing mini 'one-stop shop' (MOSS) applicable to "online services" (telecommunication services, television and broadcasting, and electronically supplies services) will be extended to distance sales of goods as from 1 January 2021.

Distance sales of goods are sales to non-taxable persons when the goods that are transported by the seller on his behalf from the member state of the seller to another member state. Sales of new means of transport (e.g. car with less than 6,000 kilometers and registered for less than 6 months) will continue to be excluded from this regime.

This regime will replace the current system that requires businesses to register in the member state of their customer when these sales exceed a certain threshold fixed by this member state. Member states could apply a threshold of €35,000 or €100,000. As an example, Luxembourg applies the highest threshold. The use of the portal will thus relieve businesses from their obligation to register for VAT in different member states and should decrease their administrative costs.

The new portal will also be available for suppliers of services, other than online services, subject to the VAT in the member state of the customer when the latter is a non-taxable person established in another member state. It would be, for example, the case of some leasing of means of transport, or real estate services.

A new portal for goods imported from non-EU countries, except goods subject to excise duties, with a value below €150 will be implemented. Above €150, a standard custom declaration will be required. Additionally, the exemption for importation of goods of a value of less than €22 is removed.

Under the new rules, VAT will be paid via these two portals at the rate applicable to these goods and services in the member state of the consumer. This implies that businesses must monitor the rates applicable in the different member states, including the reduced rates applicable in these member states and their conditions and limits.

Additionally, electronic interfaces such as marketplace, platforms, or similar means will be liable for collecting VAT on certain distance sales of goods that they facilitate. The liability will exist, on the one hand, for distance sales of goods imported from non-EU countries by EU and non-EU sellers, and, on the other hand, for all sales of goods made by non-EU sellers in the EU. However, for goods arriving directly from outside the EU, the liability exists only for goods of a value of less than €150. This is certainly one of the major changes in the system and a challenge for these intermediaries.

The proposals introduce some other changes. We will mention the most important ones:

- In addition, in cases C-326/15 DNB Banka and C-605/15 Aviva, the CJEU decided that the exemption should only be available for activities of general interest, excluding financial activities. Leaving the following questions unanswered: a) could an IGP include members established in different Member States and b) could an IGP apply an uplift to the price of its services, which is required under the legislation on direct taxation of his Member State.
- These decisions imply that the benefits of the IGP will be strictly narrowed to activities of general interest and that the financial sector could no longer benefit from this regime.
- It is thus of great importance that Luxembourg implement a VAT grouping regime (unité TVA), in line with a number of other Member States, which would allow taxpayers who are significantly impacted by the narrowed scope of the IGP exemption to offset some of the difficulties. The basic principle of a VAT group is that a number of independent entities are considered to form a single taxable person, meaning that all intra-group transactions fall outside the scope of VAT. However, the introduction of the VAT grouping regime implies a modification of the Luxembourg VAT law and a consultation of the EU VAT Committee. Consequently, the introduction of this regime will take some months.

A further Commission proposal will address further details regarding these changes. The Council approved a statement highlighting issues that the Commission must consider in the implementing phase.

As a summary, the changes to be introduced starting from 1 January 2019 offer a welcome simplification for smaller businesses. Changes applicable as of 1 January 2021 are far more important for all businesses involved in online sales of goods and services. Particularly, it will impose new obligations to electronic platforms facilitating online sales of goods and services. These changes draw thus indeed a new landscape for these businesses.

Your contacts

Raphael Glohr

Partner – VAT

T +352 451 452 665

rglohr@deloitte.lu

Christian Deglas

Partner – VAT Leader

T +352 451 452 611

cdeglas@deloitte.lu

Joachim Bailly

Partner – VAT

T +352 451 452 824

jbailly@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2017 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg