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Package Delivery!

Unboxing the impact of the European Union's VAT e-commerce package

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EU's e-commerce market

The EU's e-commerce market is growing steadily.

In 2020, an estimated **seven out of 10 internet users made online purchases**, with an estimated **one out of five purchasing from sellers outside the EU**. The adoption of e-commerce and online marketplaces is expected to increase following the shifts in consumer behavior brought by the COVID-19 pandemic.

The e-commerce VAT package

The EU recently adopted an e-commerce VAT package, which applies to **business-to-consumer (B2C) online sellers and marketplaces**. This was one of the priorities under the digital single market strategy and will come into force on 1 July 2021. According to the European Commission, the overall aim of the e-commerce VAT package is to **reduce the complexity and cost of VAT obligations for online sellers**. Online sales of goods will be taxed in the same way and at the same rates as their physical equivalents in shops, while the same VAT rate will be charged in the Member State where the EU consumer is based, regardless of where the online retailer is based.

Once it takes effect, **all commercial goods (irrespective of value) that are imported into the EU from a third country or third territory will become subject to VAT**. Major changes will include the following:

- **Abolishment of present low-value import VAT exemption:**

  On 1 July 2021, **the import VAT exemption on small parcels (i.e., those not exceeding EUR 22 in value) that are imported into the EU for consumers will be withdrawn**. This means that all commercial goods (whatever their value) that are imported into the EU from a third country or third territory will be subject to VAT.

- **New import one-stop shop (IOSS) return**

  Instead of making the consumer pay the import VAT at the moment the goods are imported into the EU (as is the default scenario), businesses have the option of charging VAT at the point of sale for consignments not exceeding EUR 150 by registering for the "IOSS scheme." This VAT is to be declared and paid via a new submission through the IOSS, a portal that allows businesses to declare and pay all the EU VAT due through one single EU country, instead of obtaining VAT registrations in each EU country where the VAT is actually due (i.e., the EU country of the consumer).

- **Making online marketplaces a deemed supplier for VAT**

  The reforms will oblige marketplaces that facilitate sales to consumers via third-party sellers to become the "deemed supplier" in certain cases (i.e., such online marketplaces assume the VAT liability on the goods sold). However, marketplace VAT liability does not extend to product liability. The EU has defined "facilitating" as any piece of software that allows sellers and consumers to come together and strike a contract for the supply of goods and that has a broad scope. The new deemed supplier regime will apply in two cases:

  - when the marketplace is facilitating a B2C sale of imports not exceeding EUR 150
  - when the marketplace is facilitating B2C sales of goods within the EU of any value for non-EU sellers

The IOSS

Under current rules, small shipments with an intrinsic value of up to EUR 22 are exempt from import VAT, regardless of who is the importer.

If the goods are imported on behalf and in the name of the consumer, usually the applicable sales tax or VAT regime (if any) of the jurisdiction of the seller applies. If the goods are imported on behalf of and in the name of the (re)seller, VAT is due in the Member State into which the goods are imported. This will now change.

Imports of small consignments of up to EUR 22 will no longer be VAT exempt. This means that all goods imported in the EU will be subject to the EU VAT regime. If a (re)seller does not opt for the IOSS regime, the consumer will usually have to pay import VAT and customs clearance fees once the goods arrive in the Member State of the consumer and are delivered to the consumer. However, if the IOSS is used, the goods remain exempt from import VAT, with the supplier being required to collect local VAT from the customer at the time of sale and remit this vat through the IOSS.

Under the IOSS regime (for goods not exceeding EUR 150), the (re)seller can register for VAT in one EU Member State and will file one monthly electronic VAT return in the Member State in which it is registered for the IOSS regime. The (re)seller needs to apply the VAT rate of the Member State in which the goods will ultimately be delivered.

The IOSS was created to simplify the declaration and payment of VAT for distance sales of goods imported into the EU. It also aims to simplify the purchase process for buyers — there will be no surprise fees upon delivery of purchased goods. **The consumer will be charged the applicable VAT at the point of sale and will not be faced with additional payments upon receipt of the goods if the IOSS regime is used.**

Which goods does the IOSS cover?

- goods dispatched or transported from outside the EU at the time of sale
- goods dispatched or transported in consignments valued up to EUR 150
- goods not subject to excise duties

Impact of the reforms

- **Understand the commercial impact for businesses:**

  The **European Commission expects the shipping of "IOSS parcels" to be faster than non-IOSS parcels**, as there are no import VAT obligations required the moment the goods enter the EU. Timeliness of delivery is a primary concern among online shoppers and will continue to be a key decision driver for repeated purchases, so **consumers are expected to opt for IOSS sellers over non-IOSS sellers**.

- **Review legal arrangements between all parties involved in the supply chain**

  The new rules will change how sales to EU consumers are taxed with VAT and who is responsible to account for such VAT. **Contracts and T&Cs that are currently in place between parties such as sellers, online marketplaces, carriers and consumers may require a revision** in order to ensure that this VAT is collected and remitted by the right party in the supply chain and that the liabilities in that respect are addressed.

- **Review the position of platforms in the supply chain**

  Online marketplaces that facilitate sales to EU-based consumers will be considered the merchant of record for VAT instead of the seller. This requires parties to assess the extent to which online marketplaces take part in the supply chain and the extent to which such online marketplaces are sufficiently "facilitating" the sale in order to qualify as a deemed reseller and for which sales. This also requires the implementation of arrangements that enable the sharing of the necessary information for the online marketplace to account for VAT.

- **Appointment of a VAT intermediary and related liability analysis**

  Sellers and online marketplaces without any presence in the EU that want to make use of the IOSS are required to appoint a VAT intermediary in the EU. That VAT intermediary will assume the VAT liability of the seller/online marketplace toward the local tax authorities. The VAT intermediary will need to rely on information received from sellers/online marketplaces in order to meet its VAT reporting obligations. Therefore, it is key to map the different liabilities and ensure such liabilities are addressed in the relationship between the seller/online marketplace and the VAT intermediary.

- **Review and — where required — rearrange the payment flow:**

  To ensure the VAT amount is actually routed to the party responsible for remitting the VAT to the local tax authorities, the **payment flow between parties needs to be reviewed and — where required** — rearranged. This may involve updating arrangements with payment service providers.

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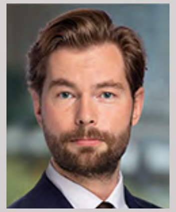

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