Executive summary

The European Union (EU) has published new EU Value Added Tax (VAT) rules that are intended to simplify the VAT regime for e-commerce. The full set of new rules will enter into force on 1 January 2021. However, from 1 January 2019, businesses can begin to benefit from the simplified “place of supply rules” for the supply of electronic services as well as telecoms and broadcasting services. According to the European Commission, the new package of EU VAT rules could reduce the compliance costs for businesses selling to multiple EU Member States through online portals by up to 95%.

The new rules will come into force in two stages. First, a much requested threshold will be introduced for the application of the existing Mini One Stop Shop (MOSS) system (detailed below) for telecommunications, broadcasting and e-services, as well as a simplification regarding the evidence that businesses will need for determining the location of their customers. Two years later, the (M)OSS system for VAT reporting and payment will be extended to all types of services (business to consumer or B2C) as well as to distance sales of goods. The current import VAT exemption for low value consignments will be removed and new rules will be introduced with regard to the VAT implications of electronically facilitating certain types of distance sales and the payment of import VAT.

This Alert summarizes the new e-commerce VAT rules.
Detailed discussion

**Rules that enter into force on 1 January 2019**

The current rules dictate that electronically supplied services, telecom services and radio and broadcasting services are VAT taxable where the customer is established, even in B2C situations. For these types of B2C services a MOSS scheme applies to prevent obligatory VAT registrations in all Member States where customers are established. The MOSS scheme allows businesses to account for and pay foreign (EU) VAT through a single online portal that is managed and run by local tax authorities. Under the new rules, a threshold of €10,000 will be introduced for EU-established suppliers, below which these services remain VAT taxable in the Member State of the supplier (unless the supplier opts to apply the “main” rule).

In addition, if the total annual turnover from the supplies of these services (by EU-established suppliers) does not exceed €100,000, businesses will be able to provide only a single item of evidence to prove where the customer is established (currently two items, independent of the turnover, are required). Finally, the invoicing rules of the Member State of identification will apply for businesses that will make use of the MOSS. Businesses that are not established in the EU but have a VAT registration in an EU Member State, will also be able to make use of the MOSS-scheme, using the portal of the Member State of registration.

**Rules that enter into force on 1 January 2021**

From 1 January 2021, the second set of the new e-commerce VAT rules, as follows, will enter into force.

**One Stop Shop (OSS)**

Under the new rules, the MOSS-scheme will be extended to all services and distance sales of goods supplied to non-taxable persons within the EU. This scheme will be open for both EU and non-EU established entities, but will only apply when the services are not subject to VAT in the country of the supplier. Non-EU established entities will need to appoint an EU-established intermediary to manage their VAT-related compliance. For these suppliers, EU input VAT will still have to be reclaimed via the Thirteenth Directive procedure (i.e., this is not possible through the OSS VAT return).

Also, the filing deadlines are extended: the deadline for submitting the VAT return will be the last day of the month following the taxable period instead of the 20th day of that month. New rules are also introduced for making adjustments to submitted OSS returns.

**Distance sales of goods**

The new threshold of €10,000, under which - from 1 January 2019 - services to non-taxable persons are VAT taxable in the Member State where the supplier is established, will be extended to distance sales of goods. “Distance sales suppliers” whose turnover does not exceed this threshold, however, may opt to have their distance sales taxed as if the threshold was exceeded (i.e., in the country of the customer, applying the OSS). This option is has to be applied for a two-year period. Additionally, businesses accounting for distance sales under the OSS will no longer have to issue (VAT) invoices. This rule already applies to other supplies made to non-taxable persons (B2C).

**Distance sales of imported goods**

The current VAT exemption for the import in the EU of small consignments with a value of less than €22 will be removed and replaced by a “special scheme” for B2C imports of low value goods in the EU. From 1 January 2021, this scheme will apply to the importation of consignments of goods with an intrinsic value of up to €150 (this will not apply to goods subject to excise duties). Under the new (hybrid) scheme, two (or actually three) options, outlined below, are available.

1. *Seller applies the OSS scheme*
   - VAT exemption for imports where the supplies are accounted for under the OSS
   - Obligation for non-EU established importers to appoint an intermediary
   - Newly introduced distance sale that is VAT taxable in the EU Member State of importation or in the EU Member State where transport of the goods ends
   - If an electronic platform facilitates the transaction and the seller is established outside the EU or the goods come from outside the EU, the platform is deemed to buy and sell the goods (i.e., it becomes “the seller”)
   - VAT collection through the OSS VAT return of the seller or his intermediary
   - VAT chargeable event takes place at the time when the payment has been accepted
   - Member States can opt to only apply the standard VAT rate to these distance sales of imported goods

In this scenario, a non-EU platform is involved in (facilitates) the supply of goods from outside the EU directly to a private individual in the EU Member State. No import VAT will be due when the goods enter the EU (are presented at
customs by the courier) if the courier can present the special identification number that will be used by the intermediary of the platform (the seller) for the application of the OSS for accounting for and paying the VAT due on the supply. The Member State VAT will be due on the “distance sale” of the goods, possibly only at the standard rate. If the intermediary is not registered in the Member State, he will have to account for and pay the local VAT via his local OSS on behalf of the seller (in this case: the platform).

2. Fall back procedure for goods where the consignment has an intrinsic value of less than €150

This system applies in cases where the seller, even though he formally has to apply the OSS, fails to do so. This does not mean that there is no taxable sale in the country of the customer, but just that there is no possibility of actually forcing the seller to account for and pay that VAT.

- The person presenting the goods to customs (couriers and postal operators) on behalf of the person for whom the goods are destined (final consumer) declares and pays the import VAT via a monthly electronic declaration.

- The final consumer will be liable for payment of the VAT that shall be collected by the person presenting the goods to customs.

- Member States are allowed to always apply the VAT standard rate to these transactions.

In this scenario, a non-EU platform is involved in (facilitates) the supply of goods from outside the EU directly to a private individual in the EU Member State. Because the seller (or the platform) has not appointed an intermediary and does not (want to) apply the OSS, import VAT will be due when the goods enter the EU (when they are presented at customs by the courier). The courier can account for the VAT he has collected from the customers under this scheme and pay it via a monthly electronic VAT return. The courier will pass this VAT cost on to the customer, same as it currently does.

3. For consignments with a value of more than €150

In this scenario, the OSS cannot be applied. However, the new “distance sale of goods from outside the EU” rule still applies, which means that non-EU established sellers will have to charge VAT of the country where the transportation of the goods ends, and VAT register there to pay that VAT. Whether they do so, the importation of the goods into the EU is also taxed.

- The current process of paying import VAT (and customs duties) will remain intact, but

- The new “distance sale of goods imported from outside the EU” taxable event will also apply, meaning that a risk of double taxation exists for these cases if the seller would decide to comply with the relevant rules, VAT register in the country of destination and pay the local VAT charged to the local tax authorities. Double taxation could occur if the VAT due on importation cannot be deducted by the “seller” - which seems likely as this VAT is normally (currently) paid by couriers and postal operators on behalf of the end customers and on-charged to them.

It is not clear from the current rules how the above will work in practice, but this is of course very relevant for customers purchasing goods from outside the EU with an intrinsic value of more than €150 as double taxation is not an acceptable outcome.

In this scenario, a non-EU platform is involved in (facilitates) the supply of goods from outside the EU directly to a private individual in the EU Member State. Because the seller (or the platform) cannot apply the OSS, import VAT will be due when the goods enter the EU (when they are presented at customs by the courier), even if the seller would VAT register in the country where the transportation ends, charge local VAT to the end customer and pay this VAT to the local tax authorities. The special scheme for declaration and payment of the import VAT does not apply.

Online marketplaces

As briefly mentioned above, online marketplaces facilitating the distance sales of imported goods through the use of an electronic interface (e.g., marketplace, platform, portal) will be deemed to have received and supplied those goods themselves. This also applies to all distance sales performed by taxable persons established outside the EU and includes both goods imported into the EU (with regard to a specific sale) and goods already located in the EU in storage facilities (of the online marketplaces or of the supplier).

The bigger picture

These new rules fit into a “grander scheme of things,” where the EU is working towards a more level playing field for e-commerce providers. Other initiatives in this area are the new regulation that bans geo-blocking (the prevention of online customers from accessing and purchasing products
or services from a website based in another Member State) and the initiative with regard to cross-border parcel delivery, aimed at making the cross-border parcel delivery market more transparent and competitive and to reduce the barriers that consumers and e-retailers encounter when purchasing products online in the EU.

Implications

In many ways, the new rules offer simplification and the likelihood of a more level playing field. Suppliers and operators of platforms that are not established in the EU should in principle apply the new rules, which seem aimed at keeping the compliance cost at a minimum.

However, the new rules also affect couriers and postal operators. Not only will they be expected to “provide the individual VAT identification number of the non-EU seller or his intermediary” to ensure that the importation of the goods is exempt from import VAT if the OSS is applied, they also will have to declare more parcels if the OSS is not applied. They will have to perform many more transactions than before, and it remains to be seen how they will be able to pass on the costs of these operations, in the light of the other EU initiatives.

Also, the new rules are not very clear about the situations where non-EU suppliers decide to apply the new rules for distance sales of goods from outside the EU without applying the OSS, because import VAT is due as well as VAT on the distance sales, creating possible double taxation.

Endnotes

1. The rules were published in the Official Journal of the European Union on 29 December 2017.

2. Because under the new rules, the Mini One Stop Shop will also be open for other services and supplies of goods, we will refer to the mechanism as the One Stop Shop.
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